

By: Keffer of Eastland, Luna, Otto, Branch

H.B. No. 3

Substitute the following for H.B. No. 3:

By: Keffer of Eastland

C.S.H.B. No. 3

A BILL TO BE ENTITLED

AN ACT

relating to the franchise tax; making an appropriation; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 171, Tax Code, is amended to read as follows:

SUBCHAPTER A. DEFINITIONS; TAX IMPOSED

Sec. 171.0001. GENERAL DEFINITIONS. In this chapter:

(1) "Affiliated group" means a group of one or more entities in which a controlling interest is owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member entities.

(2) "Assigned employee" has the meaning assigned by Section 91.001, Labor Code.

(3) "Banking corporation" means each state, national, domestic, or foreign bank, whether organized under the laws of this state, another state, or another country, or under federal law, including a limited banking association organized under Subtitle A, Title 3, Finance Code, and each bank organized under Section 25(a), Federal Reserve Act (12 U.S.C. Sections 611-631) (edge corporations), but does not include a bank holding company as that term is defined by Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Section 1841).

(4) "Beginning date" means:

1           (A) for a taxable entity chartered or organized  
2 in this state, the date on which the taxable entity's charter or  
3 organization takes effect; and

4           (B) for any other taxable entity, the date on  
5 which the taxable entity begins doing business in this state.

6           (5) "Charter" includes a limited liability company's  
7 certificate of organization, a limited partnership's certificate  
8 of limited partnership, and the registration of a limited liability  
9 partnership.

10          (6) "Client company" has the meaning assigned by  
11 Section 91.001, Labor Code.

12          (7) "Combined group" means taxable entities that are  
13 part of an affiliated group engaged in a unitary business and that  
14 are required to file a group report under Section 171.1014.

15          (8) "Controlling interest" means:

16           (A) for a corporation, either 80 percent or more,  
17 owned directly or indirectly, of the total combined voting power of  
18 all classes of stock of the corporation, or 80 percent or more,  
19 owned directly or indirectly, of the beneficial ownership interest  
20 in the voting stock of the corporation; and

21           (B) for a partnership, association, trust, or  
22 other entity, 80 percent or more, owned directly or indirectly, of  
23 the capital, profits, or beneficial interest in the partnership,  
24 association, trust, or other entity.

25          (9) "Internal Revenue Code" means the Internal Revenue  
26 Code of 1986 in effect for the federal tax year beginning on January  
27 1, 2006, and any regulations adopted under that code applicable to

1 that period.

2 (10) "Lending institution" means an entity that makes  
3 loans and is regulated by the Federal Reserve Board, the Office of  
4 the Comptroller of the Currency, the Federal Deposit Insurance  
5 Corporation, the Texas Department of Banking, the Office of  
6 Consumer Credit Commissioner, the Department of Savings and  
7 Mortgage Lending, the Credit Union Department, or any comparable  
8 regulatory body.

9 (11) "Retail trade" means the activities described in  
10 Division G of the 1987 Standard Industrial Classification Manual  
11 published by the federal Office of Management and Budget.

12 (12) "Savings and loan association" means a savings  
13 and loan association or savings bank, whether organized under the  
14 laws of this state, another state, or another country, or under  
15 federal law.

16 (13) "Shareholder" includes a limited liability  
17 company's member and a limited banking association's participant.

18 (14) "Staff leasing services company" has the meaning  
19 assigned by Section 91.001, Labor Code.

20 (15) "Total revenue" means the total revenue of a  
21 taxable entity as determined under Section 171.1011.

22 (16) "Unitary business" means a single economic  
23 enterprise that is made up of separate parts of a single entity or  
24 of a commonly controlled group of entities that are sufficiently  
25 interdependent, integrated, and interrelated through their  
26 activities so as to provide a synergy and mutual benefit that  
27 produces a sharing or exchange of value among them and a significant

1 flow of value to the separate parts. In determining whether a  
2 unitary business exists, the comptroller shall consider any  
3 relevant factor, including whether:

4 (A) the activities of the group members:

5 (i) are in the same general line, such as  
6 manufacturing, wholesaling, retailing of tangible personal  
7 property, insurance, transportation, or finance; or

8 (ii) are steps in a vertically structured  
9 enterprise or process, such as the steps involved in the production  
10 of natural resources, including exploration, mining, refining, and  
11 marketing; and

12 (B) the members are functionally integrated  
13 through the exercise of strong centralized management, such as  
14 authority over purchasing, financing, product line, personnel, and  
15 marketing.

16 (17) "Wholesale trade" means the activities described  
17 in Division F of the 1987 Standard Industrial Classification Manual  
18 published by the federal Office of Management and Budget.

19 Sec. 171.0002. DEFINITION OF TAXABLE ENTITY. (a) Except as  
20 otherwise provided by this section, "taxable entity" means a  
21 partnership, corporation, banking corporation, savings and loan  
22 association, limited liability company, business trust,  
23 professional association, business association, joint venture,  
24 joint stock company, holding company, or other legal entity. The  
25 term includes a combined group. A joint venture does not include  
26 joint operating or co-ownership arrangements meeting the  
27 requirements of Treasury Regulation Section 1.761-2(a)(3) that

1 elect out of federal partnership treatment as provided by Section  
2 761(a), Internal Revenue Code.

3 (b) "Taxable entity" does not include:

4 (1) a sole proprietorship;

5 (2) a general partnership the direct ownership of  
6 which is entirely composed of natural persons;

7 (3) a passive entity as defined by Section 171.0003;

8 or

9 (4) an entity that is exempt from taxation under  
10 Subchapter B.

11 (c) "Taxable entity" does not include an entity that is:

12 (1) a grantor trust as defined by Sections 671 and  
13 7701(a)(30)(E), Internal Revenue Code, all of the grantors and  
14 beneficiaries of which are natural persons or charitable entities  
15 as described in Section 501(c)(3), Internal Revenue Code, excluding  
16 a trust taxable as a business entity pursuant to Treasury  
17 Regulation Section 301.7701-4(b);

18 (2) an estate of a natural person as defined by Section  
19 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable  
20 as a business entity pursuant to Treasury Regulation Section  
21 301.7701-4(b);

22 (3) an escrow;

23 (4) a family limited partnership that is a passive  
24 entity in which at least 80 percent of the interests are held,  
25 directly or indirectly, by members of the same family, including an  
26 individual's ancestors, lineal descendants, spouse, and brothers  
27 and sisters by the whole or half blood, and the estate of any of

1 these persons, and that is a limited partnership:

2 (A) formed pursuant to the Texas Revised Limited  
3 Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes);

4 (B) formed pursuant to the limited partnership  
5 law of any other state; or

6 (C) treated as a partnership for federal income  
7 tax purposes;

8 (5) a passive investment partnership that is a passive  
9 entity and that is:

10 (A) formed pursuant to the Texas Revised Limited  
11 Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes);

12 (B) formed pursuant to the limited partnership  
13 law of any other state; or

14 (C) formed pursuant to the limited partnership  
15 laws of any foreign country;

16 (6) a passive investment partnership that is a passive  
17 entity and is a general partnership;

18 (7) a trust that is a passive entity:

19 (A) that is taxable as a trust under Section 641,  
20 Internal Revenue Code;

21 (B) all of the beneficiaries of which are natural  
22 persons or charitable entities as defined in Section 501(c)(3),  
23 Internal Revenue Code;

24 (C) that is not a trust taxable as a business  
25 entity pursuant to Treasury Regulation Section 301.7701-4(b); and

26 (D) that is organized as a trust and is described  
27 in Section 7701(a)(30)(E), Internal Revenue Code;

1           (8) a real estate investment trust (REIT) as defined  
2 by Section 856, Internal Revenue Code, and its "qualified REIT  
3 subsidiary" entities as defined by Section 856(i)(2), Internal  
4 Revenue Code, provided that:

5           (A) a REIT with any amount of its assets in direct  
6 holdings of real estate, other than real estate it occupies for  
7 business purposes, as opposed to holding interests in limited  
8 partnerships or other entities that directly hold the real estate,  
9 is a taxable entity; and

10           (B) a limited partnership or other entity that  
11 directly holds the real estate as described in Paragraph (A) is not  
12 exempt under this subdivision, without regard to whether a REIT  
13 holds an interest in it; or

14           (9) a real estate mortgage investment conduit (REMIC),  
15 as defined by Section 860D, Internal Revenue Code.

16           (d) An entity that can file as a sole proprietorship for  
17 federal tax purposes is not a sole proprietorship for purposes of  
18 Subsection (b)(1) and is not exempt under that subsection if the  
19 entity is formed in a manner under the statutes of this state or  
20 another state that limit the liability of the entity.

21           Sec. 171.0003. DEFINITION OF PASSIVE ENTITY. (a) An entity  
22 is a passive entity only if:

23           (1) the entity is a general or limited partnership or a  
24 trust, other than a business trust;

25           (2) during the period on which margin is based, the  
26 entity's federal gross income consists of at least 90 percent  
27 of the following income:

1           (A) dividends, interest, foreign currency  
2 exchange gain, periodic and nonperiodic payments with respect to  
3 notional principal contracts, option premiums, cash settlement or  
4 termination payments with respect to a financial instrument, and  
5 income from a limited liability company;

6           (B) distributive shares of partnership income to  
7 the extent that those distributive shares of income are greater  
8 than zero;

9           (C) gains from the sale of real property,  
10 commodities traded on a commodities exchange, and securities; and

11           (D) royalties, bonuses, or delay rental income  
12 from mineral properties and income from other nonoperating mineral  
13 interests; and

14           (3) the entity does not receive more than 10 percent of  
15 its federal gross income that is not described in Subdivision (2)  
16 from conducting an active trade or business.

17           (b) The income described by Subsection (a)(2) does not  
18 include:

19                   (1) rent; or

20                   (2) income received by a nonoperator from mineral  
21 properties under a joint operating agreement if the nonoperator is  
22 a member of an affiliated group and another member of that group is  
23 the operator under the same joint operating agreement.

24           Sec. 171.0004. DEFINITION OF CONDUCTING ACTIVE TRADE OR  
25 BUSINESS. (a) The definition in this section applies only to  
26 Section 171.0003.

27           (b) An entity conducts an active trade or business if:

1           (1) the activities being carried on by the entity  
2 include one or more active operations that form a part of the  
3 process of earning income or profit; and

4           (2) the entity performs active management and  
5 operational functions.

6           (c) Activities performed by the entity include activities  
7 performed by persons outside the entity, including independent  
8 contractors, to the extent the persons perform services on behalf  
9 of the entity and those services constitute all or part of the  
10 entity's trade or business.

11           (d) An entity conducts an active trade or business if  
12 assets, including royalties, patents, trademarks, and other  
13 intangible assets, held by the entity are used in the active trade  
14 or business of one or more related entities.

15           (e) For purposes of this section:

16           (1) the ownership of a royalty interest or a  
17 nonoperating working interest in mineral rights does not constitute  
18 conduct of an active trade or business; and

19           (2) payment of compensation to employees or  
20 independent contractors for financial or legal services reasonably  
21 necessary for the operation of the entity does not constitute  
22 conduct of an active trade or business.

23           Sec. 171.001. TAX IMPOSED. (a) A franchise tax is imposed  
24 on[+]

25           [~~(1)~~] each taxable entity [~~corporation~~] that does  
26 business in this state or that is chartered or organized in this  
27 state[~~, and~~

1           ~~[(2) each limited liability company that does business~~  
2 ~~in this state or that is organized under the laws of this state].~~

3           (b) ~~[In this chapter:~~

4           ~~[(1) "Banking corporation" means each state,~~  
5 ~~national, domestic, or foreign bank, whether organized under the~~  
6 ~~laws of this state, another state, or another country, or under~~  
7 ~~federal law, including a limited banking association organized~~  
8 ~~under Subtitle A, Title 3, Finance Code, and each bank organized~~  
9 ~~under Section 25(a), Federal Reserve Act (12 U.S.C. Secs. 611-631)~~  
10 ~~(edge corporations), but does not include a bank holding company as~~  
11 ~~that term is defined by Section 2, Bank Holding Company Act of 1956~~  
12 ~~(12 U.S.C. Sec. 1841).~~

13           ~~[(2) "Beginning date" means:~~

14           ~~[(A) for a corporation chartered in this state,~~  
15 ~~the date on which the corporation's charter takes effect; and~~

16           ~~[(B) for a foreign corporation, the date on which~~  
17 ~~the corporation begins doing business in this state.~~

18           ~~[(3) "Corporation" includes:~~

19           ~~[(A) a limited liability company, as defined~~  
20 ~~under the Texas Limited Liability Company Act;~~

21           ~~[(B) a savings and loan association; and~~

22           ~~[(C) a banking corporation.~~

23           ~~[(4) "Charter" includes a limited liability company's~~  
24 ~~certificate of organization.~~

25           ~~[(5) "Internal Revenue Code" means the Internal~~  
26 ~~Revenue Code of 1986 in effect for the federal tax year beginning on~~  
27 ~~or after January 1, 1996, and before January 1, 1997, and any~~

1 ~~regulations adopted under that code applicable to that period.~~

2 ~~[(6) "Officer" and "director" include a limited~~  
3 ~~liability company's directors and managers and a limited banking~~  
4 ~~association's directors and managers and participants if there are~~  
5 ~~no directors or managers.~~

6 ~~[(7) "Savings and loan association" means a savings~~  
7 ~~and loan association or savings bank, whether organized under the~~  
8 ~~laws of this state, another state, or another country, or under~~  
9 ~~federal law.~~

10 ~~[(8) "Shareholder" includes a limited liability~~  
11 ~~company's member and a limited banking association's participant.~~

12 ~~[(e)]~~ The tax imposed under this chapter extends to the  
13 limits of the United States Constitution and the federal law  
14 adopted under the United States Constitution.

15 Sec. 171.0011. ADDITIONAL TAX. (a) Except as provided by  
16 Subsection (e), an ~~An~~ additional tax is imposed on a taxable  
17 entity ~~[corporation]~~ that for any reason becomes no longer subject  
18 to the ~~[earned surplus component of the tax, without regard to~~  
19 ~~whether the corporation remains subject to the taxable capital~~  
20 ~~component of the]~~ tax imposed under this chapter.

21 (b) The additional tax is equal to the appropriate rate  
22 under Section 171.002 of the taxable entity's taxable margin ~~[4.5~~  
23 ~~percent of the corporation's net taxable earned surplus]~~ computed  
24 on the period beginning on the day after the last day for which the  
25 tax imposed on taxable margin ~~[net taxable earned surplus]~~ was  
26 computed ~~[under Section 171.1532]~~ and ending on the date the  
27 taxable entity ~~[corporation]~~ is no longer subject to the ~~[earned~~

1 ~~surplus component of the~~ tax imposed under this chapter.

2 (c) The additional tax imposed and any report required by  
3 the comptroller are due on the 60th day after the date the taxable  
4 entity [~~corporation~~] becomes no longer subject to the [~~earned~~  
5 ~~surplus component of the~~] tax imposed under this chapter.

6 (d) Except as otherwise provided by this section, the  
7 provisions of this chapter apply to the tax imposed under this  
8 section.

9 (e) An additional tax is not imposed on a taxable entity  
10 that becomes no longer subject to the tax imposed under this chapter  
11 because the entity qualifies as a passive entity.

12 Sec. 171.002. RATES; COMPUTATION OF TAX. (a) Except as  
13 provided by Subsection (b), the rate [~~The rates~~] of the franchise  
14 tax is one [~~are~~]

15 [~~(1) 0.25~~] percent per year of privilege period of  
16 [~~net~~] taxable margin [~~capital, and~~

17 [~~(2) 4.5 percent of net taxable earned surplus~~].

18 (b) The rate of the franchise tax is 0.5 percent per year of  
19 privilege period of taxable margin for those taxable entities  
20 primarily engaged in retail or wholesale trade. [~~The amount of~~  
21 ~~franchise tax on each corporation is computed by adding the~~  
22 ~~following:~~

23 [~~(1) the amount calculated by applying the tax rate~~  
24 ~~prescribed by Subsection (a)(1) to the corporation's net taxable~~  
25 ~~capital, and~~

26 [~~(2) the difference between:~~

27 [~~(A) the amount calculated by applying the tax~~

1 ~~rate prescribed by Subsection (a)(2) to the corporation's net~~  
2 ~~taxable earned surplus; and~~

3 ~~[(B) the amount determined under Subdivision~~  
4 ~~(1).]~~

5 (c) A taxable entity is primarily engaged in retail or  
6 wholesale trade only if:

7 (1) the total revenue from its activities in retail or  
8 wholesale trade is greater than the total revenue from its  
9 activities in trades other than the retail and wholesale trades;

10 (2) except as provided by Subsection (c-1), less than  
11 50 percent of the total revenue from activities in retail or  
12 wholesale trade comes from the sale of products it produces or  
13 products produced by an entity that is part of an affiliated group  
14 to which the taxable entity also belongs; and

15 (3) the taxable entity does not provide retail or  
16 wholesale utilities, including telecommunications services and  
17 electricity or gas. [~~In making a computation under Subsection (b),~~  
18 ~~an amount computed under Subsection (b)(1) or (b)(2) that is zero or~~  
19 ~~less is computed as a zero.]~~

20 (c-1) Subsection (c)(2) does not apply to total revenue from  
21 activities in a retail trade described by Major Group 58 of the  
22 Standard Industrial Classification Manual published by the federal  
23 Office of Management and Budget.

24 (d) A taxable entity [~~corporation~~] is not required to pay  
25 any tax and is not considered to owe any tax for a period if:

26 (1) the amount of tax computed for the taxable entity  
27 [~~corporation~~] is less than \$100; or

1           (2) the amount of the taxable entity's total revenue  
2 ~~[corporation's gross receipts.~~

3           ~~[(A)]~~ from its entire business ~~[under Section~~  
4 ~~171.105]~~ is less than or equal to \$300,000 or the amount determined  
5 under Section 171.006 ~~[\$150,000, and~~

6           ~~[(B) from its entire business under Section~~  
7 ~~171.1051, including the amount excepted under Section 171.1051(a),~~  
8 ~~is less than \$150,000].~~

9           ~~[Sec. 171.005. RATE OF TAX FOR CORPORATION IN PROCESS OF~~  
10 ~~LIQUIDATION. The franchise tax rate on a corporation in the process~~  
11 ~~of liquidation, as defined by Section 171.102 of this code, is the~~  
12 ~~rate established by Section 171.002 of this code.]~~

13           Sec. 171.006. ADJUSTMENT OF ELIGIBILITY FOR EXEMPTION AND  
14 COMPENSATION DEDUCTION. (a) In this section, "consumer price  
15 index" means the average over a state fiscal biennium of the  
16 Consumer Price Index for All Urban Consumers (CPI-U), U.S. City  
17 Average, published monthly by the United States Bureau of Labor  
18 Statistics, or its successor in function.

19           (b) Beginning in 2009, on January 1 of each odd-numbered  
20 year, the amounts prescribed by Sections 171.002(d)(2) and  
21 171.1013(c) are increased or decreased by an amount equal to the  
22 amount prescribed by those sections on December 31 of the preceding  
23 year multiplied by the percentage increase or decrease during the  
24 preceding state fiscal biennium in the consumer price index and  
25 rounded to the nearest \$10,000.

26           (c) The amounts determined under Subsection (b) apply to a  
27 report originally due on or after the date the determination is

1 made.

2 (d) The comptroller shall make the determination required  
3 by this section and may adopt rules related to making that  
4 determination.

5 (e) A determination by the comptroller under this section is  
6 final and may not be appealed.

7 SECTION 2. Subchapter B, Chapter 171, Tax Code, is amended  
8 by adding Section 171.088 to read as follows:

9 Sec. 171.088. EXEMPTION--NONCORPORATE ENTITY ELIGIBLE FOR  
10 CERTAIN EXEMPTIONS. An entity that is not a corporation but that,  
11 because of its activities, would qualify for a specific exemption  
12 under this subchapter if it were a corporation, qualifies for the  
13 exemption and is exempt from the tax in the same manner and under  
14 the same conditions as a corporation.

15 SECTION 3. Subchapter C, Chapter 171, Tax Code, is amended,  
16 including the reenacting and amending of Section 171.109(g), Tax  
17 Code, as amended by Chapters 801 and 1198, Acts of the 71st  
18 Legislature, Regular Session, 1989, to read as follows:

19 SUBCHAPTER C. DETERMINATION OF TAXABLE MARGIN [~~CAPITAL AND TAXABLE~~  
20 ~~EARNED SURPLUS~~]; ALLOCATION AND APPORTIONMENT

21 Sec. 171.101. DETERMINATION OF [~~NET~~] TAXABLE MARGIN  
22 [~~CAPITAL~~]. (a) The [~~Except as provided by Subsections (b) and (c),~~  
23 ~~the net~~] taxable margin [~~capital~~] of a taxable entity [~~corporation~~]  
24 is computed by:

25 (1) determining the taxable entity's margin, which is  
26 the lesser of:

27 (A) 70 percent of the taxable entity's total

1 revenue from its entire business, as determined under Section  
2 171.1011; or

3 (B) an amount computed by:

4 (i) determining the taxable entity's total  
5 revenue from its entire business, under Section 171.1011; and

6 (ii) subtracting, at the election of the  
7 taxable entity, either:

8 (a) cost of goods sold, as determined  
9 under Section 171.1012; or

10 (b) compensation, as determined under  
11 Section 171.1013; [~~adding the corporation's stated capital, as~~  
12 ~~defined by Article 1.02, Texas Business Corporation Act, and the~~  
13 ~~corporation's surplus, to determine the corporation's taxable~~  
14 ~~capital];~~

15 (2) apportioning the taxable entity's margin  
16 [~~corporation's taxable capital~~] to this state as provided by  
17 Section 171.106 [~~171.106(a) or (c), as applicable,~~] to determine  
18 the taxable entity's [~~corporation's~~] apportioned margin [~~taxable~~  
19 ~~capital~~]; and

20 (3) subtracting from the amount computed under  
21 Subdivision (2) any other allowable deductions to determine the  
22 taxable entity's [~~corporation's net~~] taxable margin [~~capital~~].

23 (b) Notwithstanding Subsection (a)(1)(B)(ii), a staff  
24 leasing services company may subtract only compensation as  
25 determined under Section 171.1013.

26 (c) In making a computation under this section, an amount  
27 that is zero or less is computed as a zero [~~The net taxable capital~~

1 of a limited liability company is computed by:

2 ~~[(1) adding the company's members' contributions, as~~  
3 ~~provided for under the Texas Limited Liability Company Act, and~~  
4 ~~surplus to determine the company's taxable capital;~~

5 ~~[(2) apportioning the amount determined under~~  
6 ~~Subdivision (1) to this state in the same manner that the taxable~~  
7 ~~capital of a corporation is apportioned to this state under Section~~  
8 ~~171.106(a) or (c), as applicable, to determine the company's~~  
9 ~~apportioned taxable capital; and~~

10 ~~[(3) subtracting from the amount computed under~~  
11 ~~Subdivision (2) any other allowable deductions, to determine the~~  
12 ~~company's net taxable capital.~~

13 ~~[(c) The net taxable capital of a savings and loan~~  
14 ~~association is computed by:~~

15 ~~[(1) determining the association's net worth; and~~

16 ~~[(2) apportioning the amount determined under~~  
17 ~~Subdivision (1) to this state in the same manner that the taxable~~  
18 ~~capital of a corporation is apportioned to this state under Section~~  
19 ~~171.106(a) to determine the association's net taxable capital].~~

20 (d) An election under Subsection (a)(1)(B)(ii) shall be  
21 made by the taxable entity on its annual report and is effective  
22 only for that annual report. The election may be changed by filing  
23 an amended report.

24 Sec. 171.1011. DETERMINATION OF TOTAL REVENUE FROM ENTIRE  
25 BUSINESS. (a) In this section, a reference to an Internal Revenue  
26 Service form includes a variant of the form. For example, a  
27 reference to Form 1120 includes Forms 1120-A, 1120-S, and other

1 variants of Form 1120. A reference to an Internal Revenue Service  
2 form also includes any subsequent form with a different number or  
3 designation that substantially provides the same information as the  
4 original form.

5 (b) In this section, a reference to an amount entered on a  
6 line number on an Internal Revenue Service form includes the  
7 corresponding amount entered on a variant of the form, or a  
8 subsequent form, with a different line number. The comptroller  
9 shall adopt rules as necessary to accomplish the legislative intent  
10 prescribed by this subsection and Subsection (a).

11 (c) Except as provided by this section, and subject to  
12 Section 171.1014, for the purpose of computing its taxable margin  
13 under Section 171.101, the total revenue of a taxable entity is:

14 (1) for a taxable entity treated for federal income  
15 tax purposes as a corporation, an amount computed by:

16 (A) adding:

17 (i) the amount entered on line 1c, Internal  
18 Revenue Service Form 1120; and

19 (ii) the amounts entered on lines 4 through  
20 10, Internal Revenue Service Form 1120; and

21 (B) subtracting:

22 (i) bad debt expensed for federal income  
23 tax purposes that corresponds to items of gross receipts included  
24 in Subsection (c)(1)(A) for the current reporting period or a past  
25 reporting period;

26 (ii) to the extent included in Subsection  
27 (c)(1)(A), foreign royalties and foreign dividends, including

1 amounts determined under Section 78 or Sections 951-964, Internal  
2 Revenue Code;

3 (iii) to the extent included in Subsection  
4 (c)(1)(A), net distributive income from partnerships and from  
5 trusts and limited liability companies treated as partnerships for  
6 federal income tax purposes and net distributive income from  
7 limited liability companies and corporations treated as S  
8 corporations for federal income tax purposes;

9 (iv) allowable deductions from Internal  
10 Revenue Service Form 1120, Schedule C, to the extent the relating  
11 dividend income is included in total revenue;

12 (v) to the extent included in Subsection  
13 (c)(1)(A), items of income attributable to an entity that is a  
14 disregarded entity for federal income tax purposes; and

15 (vi) to the extent included in Subsection  
16 (c)(1)(A), other amounts authorized by this section;

17 (2) for a taxable entity treated for federal income  
18 tax purposes as a partnership, an amount computed by:

19 (A) adding:

20 (i) the amount entered on line 1c, Internal  
21 Revenue Service Form 1065;

22 (ii) the amounts entered on lines 4 through  
23 7, Internal Revenue Service Form 1065; and

24 (iii) the amounts entered on lines 2  
25 through 11, Internal Revenue Service Form 1065, Schedule K; and

26 (B) subtracting:

27 (i) bad debt expensed for federal income

1 tax purposes that corresponds to items of gross receipts included  
2 in Subsection (c)(2)(A) for the current reporting period or a past  
3 reporting period;

4 (ii) to the extent included in Subsection  
5 (c)(2)(A), foreign royalties and foreign dividends, including  
6 amounts determined under Section 78 or Sections 951-964, Internal  
7 Revenue Code;

8 (iii) to the extent included in Subsection  
9 (c)(2)(A), net distributive income from partnerships and from  
10 trusts and limited liability companies treated as partnerships for  
11 federal income tax purposes and net distributive income from  
12 limited liability companies and corporations treated as S  
13 corporations for federal income tax purposes;

14 (iv) to the extent included in Subsection  
15 (c)(2)(A), items of income attributable to an entity that is a  
16 disregarded entity for federal income tax purposes; and

17 (v) to the extent included in Subsection  
18 (c)(2)(A), other amounts authorized by this section; or

19 (3) for a taxable entity other than a taxable entity  
20 treated for federal income tax purposes as a corporation or  
21 partnership, an amount determined in a manner substantially  
22 equivalent to the amount for Subdivision (1) or (2) determined by  
23 rules that the comptroller shall adopt.

24 (d) Subject to Section 171.1014, a corporation that is part  
25 of a federal consolidated group shall compute its total revenue  
26 under Subsection (c) as if it had filed a separate return for  
27 federal income tax purposes.

1       (e) A taxable entity that owns an interest in a passive  
2 entity that is not included in a group report under Section 171.1014  
3 shall include in the taxable entity's total revenue the taxable  
4 entity's share of the net income of the passive entity, but only to  
5 the extent the net income of the passive entity was not generated by  
6 the margin of any other taxable entity.

7       (f) A taxable entity shall exclude from its total revenue,  
8 to the extent included under Subsection (c)(1)(A), (c)(2)(A), or  
9 (c)(3), flow-through funds that are mandated by law or fiduciary  
10 duty to be distributed to other entities, including taxes collected  
11 from a third party by the taxable entity and remitted by the taxable  
12 entity to a taxing authority.

13       (g) A taxable entity shall exclude from its total revenue,  
14 to the extent included under Subsection (c)(1)(A), (c)(2)(A), or  
15 (c)(3), only the following flow-through funds that are mandated by  
16 contract to be distributed to other entities:

17               (1) sales commissions to nonemployees, including  
18 split-fee real estate commissions;

19               (2) the tax basis as determined under the Internal  
20 Revenue Code of securities underwritten; and

21               (3) subcontracting payments handled by the taxable  
22 entity to provide services, labor, or materials in connection with  
23 the actual or proposed design, construction, remodeling, or repair  
24 of improvements on real property or the location of the boundaries  
25 of real property.

26       (g-1) A taxable entity that is a lending institution shall  
27 exclude from its total revenue, to the extent included under

1 Subsection (c)(1)(A), (c)(2)(A), or (c)(3), proceeds from the  
2 principal repayment of loans.

3 (g-2) A taxable entity shall exclude from its total revenue,  
4 to the extent included under Subsection (c)(1)(A), (c)(2)(A), or  
5 (c)(3), the tax basis as determined under the Internal Revenue Code  
6 of securities and loans sold.

7 (g-3) A taxable entity that provides legal services shall  
8 exclude from its total revenue, to the extent included under  
9 Subsection (c)(1)(A), (c)(2)(A), or (c)(3):

10 (1) the following flow-through funds that are mandated  
11 by law, contract, or fiduciary duty to be distributed to the  
12 claimant by the claimant's attorney or to other entities on behalf  
13 of a claimant by the claimant's attorney:

14 (A) damages due the claimant;

15 (B) funds subject to a lien or other contractual  
16 obligation arising out of the representation, other than fees owed  
17 to the attorney;

18 (C) funds subject to a subrogation interest or  
19 other third-party contractual claim; and

20 (D) fees paid an attorney in the matter who is not  
21 a member, partner, shareholder, or employee of the taxable entity;  
22 and

23 (2) reimbursement of the taxable entity's expenses  
24 incurred in prosecuting a claimant's matter that are specific to  
25 the matter and that are not general operating expenses.

26 (h) If the taxable entity belongs to an affiliated group,  
27 the taxable entity may not exclude payments described by Subsection

1 (f), (g), (g-1), (g-2), or (g-3) that are made to entities that are  
2 members of the affiliated group.

3 (i) Except as provided by Subsection (g), a payment made  
4 under an ordinary contract for the provision of services in the  
5 regular course of business may not be excluded.

6 (j) Any amount excluded under this section may not be  
7 included in the determination of cost of goods sold under Section  
8 171.1012 or the determination of compensation under Section  
9 171.1013.

10 (k) A taxable entity that is a staff leasing services  
11 company shall exclude from its total revenue payments received from  
12 a client company for wages, payroll taxes on those wages, employee  
13 benefits, and workers' compensation benefits for the assigned  
14 employees of the client company.

15 (l) For purposes of Subsection (g)(1):

16 (1) "Sales commission" means:

17 (A) any form of compensation paid to a person for  
18 engaging in an act for which a license is required by Chapter 1101,  
19 Occupations Code; and

20 (B) compensation paid to a sales representative  
21 by a principal in an amount that is based on the amount or level of  
22 certain orders for or sales of the principal's product and that the  
23 principal is required to report on Internal Revenue Service Form  
24 1099-MISC.

25 (2) "Principal" means a person who:

26 (A) manufactures, produces, imports, or  
27 distributes a product for sale;

1                   (B) uses a sales representative to solicit orders  
2 for the product; and

3                   (C) compensates the sales representative wholly  
4 or partly by sales commission.

5           (m) A taxable entity shall exclude from its total revenue,  
6 to the extent included under Subsection (c)(1)(A), (c)(2)(A), or  
7 (c)(3), dividends and interest received from federal obligations.

8           (n) Except as provided by Subsection (o), a taxable entity  
9 that is a health care provider shall exclude from its total revenue,  
10 to the extent included under Subsection (c)(1)(A), (c)(2)(A), or  
11 (c)(3):

12                   (1) the total amount of payments the health care  
13 provider received:

14                   (A) under the Medicaid program, Medicare  
15 program, and Children's Health Insurance Program (CHIP);

16                   (B) for professional services provided in  
17 relation to a workers' compensation claim under Title 5, Labor  
18 Code; and

19                   (C) for professional services provided to a  
20 beneficiary rendered under the TRICARE military health system; and

21                   (2) the actual cost to the health care provider for any  
22 uncompensated care provided, but only if the provider maintains  
23 records of the uncompensated care for auditing purposes and, if the  
24 provider later receives payment for all or part of that care, the  
25 provider adjusts the amount excluded for the tax year in which the  
26 payment is received.

27           (n-1) The comptroller shall adopt rules governing:

1           (1) the computation of the actual cost to a health care  
2 provider of any uncompensated care provided under Subsection  
3 (n)(2); and

4           (2) the audit requirements related to the computation  
5 of those costs.

6           (o) A health care provider that is a health care institution  
7 shall exclude from its total revenue, to the extent included under  
8 Subsection (c)(1)(A), (c)(2)(A), or (c)(3), 50 percent of the  
9 amounts described by Subsection (n).

10          (p) In this section:

11           (1) "Federal obligations" means:

12                   (A) stocks and other direct obligations of, and  
13 obligations unconditionally guaranteed by, the United States  
14 government and United States government agencies; and

15                   (B) direct obligations of a United States  
16 government-sponsored agency.

17           (2) "Health care institution" means:

18                   (A) an ambulatory surgical center;

19                   (B) an assisted living facility licensed under  
20 Chapter 247, Health and Safety Code;

21                   (C) an emergency medical services provider;

22                   (D) a home and community support services agency;

23                   (E) a hospice;

24                   (F) a hospital;

25                   (G) a hospital system;

26                   (H) an intermediate care facility for the  
27 mentally retarded or a home and community-based services waiver

1 program for persons with mental retardation adopted in accordance  
2 with Section 1915(c) of the federal Social Security Act (42 U.S.C.  
3 Section 1396n);

4 (I) a nursing home;

5 (J) an end stage renal disease facility licensed  
6 under Section 251.011, Health and Safety Code; or

7 (K) a pharmacy.

8 (3) "Health care provider" means a taxable entity that  
9 participates in the Medicaid program, Medicare program, Children's  
10 Health Insurance Program (CHIP), state workers' compensation  
11 program, or TRICARE military health system as a provider of health  
12 care services.

13 (4) "Obligation" means any bond, debenture, security,  
14 mortgage-backed security, pass-through certificate, or other  
15 evidence of indebtedness of the issuing entity. The term does not  
16 include a deposit, a repurchase agreement, a loan, a lease, a  
17 participation in a loan or pool of loans, a loan collateralized by  
18 an obligation of a United States government agency, or a loan  
19 guaranteed by a United States government agency.

20 (5) "United States government" means any department or  
21 ministry of the federal government, including a federal reserve  
22 bank. The term does not include a state or local government, a  
23 commercial enterprise owned wholly or partly by the United States  
24 government, or a local governmental entity or commercial enterprise  
25 whose obligations are guaranteed by the United States government.

26 (6) "United States government agency" means an  
27 instrumentality of the United States government whose obligations

1 are fully and explicitly guaranteed as to the timely payment of  
2 principal and interest by the full faith and credit of the United  
3 States government. The term includes the Government National  
4 Mortgage Association, the Department of Veterans Affairs, the  
5 Federal Housing Administration, the Farmers Home Administration,  
6 the Export-Import Bank, the Overseas Private Investment  
7 Corporation, the Commodity Credit Corporation, the Small Business  
8 Administration, and any successor agency.

9 (7) "United States government-sponsored agency" means  
10 an agency originally established or chartered by the United States  
11 government to serve public purposes specified by the United States  
12 Congress but whose obligations are not explicitly guaranteed by the  
13 full faith and credit of the United States government. The term  
14 includes the Federal Home Loan Mortgage Corporation, the Federal  
15 National Mortgage Association, the Farm Credit System, the Federal  
16 Home Loan Bank System, the Student Loan Marketing Association, and  
17 any successor agency.

18 Sec. 171.1012. DETERMINATION OF COST OF GOODS SOLD. (a) In  
19 this section:

20 (1) "Goods" means real or tangible personal property  
21 sold in the ordinary course of business of a taxable entity.

22 (2) "Production" includes construction, installation,  
23 manufacture, development, mining, extraction, improvement,  
24 creation, raising, or growth.

25 (3)(A) "Tangible personal property" means:

26 (i) personal property that can be seen,  
27 weighed, measured, felt, or touched or that is perceptible to the

1 senses in any other manner;

2 (ii) films, sound recordings, videotapes,  
3 books, and other similar property embodying words, ideas, concepts,  
4 images, or sound by the creator of the property for which, as costs  
5 are incurred in producing the property, it is intended or is  
6 reasonably likely that any tangible medium in which the property is  
7 embodied will be mass-distributed by the creator or any one or more  
8 third parties in a form that is not substantially altered; and

9 (iii) a computer program, as defined by  
10 Section 151.0031.

11 (B) "Tangible personal property" does not  
12 include:

13 (i) intangible property; or

14 (ii) services.

15 (b) Subject to Section 171.1014, a taxable entity that  
16 elects to subtract cost of goods sold for the purpose of computing  
17 its taxable margin shall determine the amount of that cost of goods  
18 sold as provided by this section.

19 (c) The cost of goods sold includes all direct costs of  
20 acquiring or producing the goods, including:

21 (1) labor costs;

22 (2) cost of materials that are an integral part of  
23 specific property produced;

24 (3) cost of materials that are consumed in the  
25 ordinary course of performing production activities;

26 (4) handling costs, including costs attributable to  
27 processing, assembling, repackaging, and inbound transportation

1 costs;

2 (5) storage costs, including the costs of carrying,  
3 storing, or warehousing property, subject to Subsection (e);

4 (6) depreciation, depletion, and amortization, to the  
5 extent associated with and necessary for the production of goods,  
6 including recovery described by Section 197, Internal Revenue Code;

7 (7) the cost of renting or leasing equipment,  
8 facilities, or real property directly used for the production of  
9 the goods, including pollution control equipment and intangible  
10 drilling and dry hole costs;

11 (8) the cost of repairing and maintaining equipment,  
12 facilities, or real property directly used for the production of  
13 the goods, including pollution control devices;

14 (9) costs attributable to research, experimental,  
15 engineering, and design activities directly related to the  
16 production of the goods;

17 (10) geological and geophysical costs incurred to  
18 identify and locate property that has the potential to produce  
19 minerals;

20 (11) taxes paid in relation to acquiring or producing  
21 any material, or taxes paid in relation to services that are a  
22 direct cost of production;

23 (12) the cost of producing or acquiring electricity  
24 sold; and

25 (13) a contribution to a partnership in which the  
26 taxable entity owns an interest that is used to fund activities, the  
27 costs of which would otherwise be treated as cost of goods sold of

1 the partnership, but only to the extent that those costs are related  
2 to goods distributed to the taxable entity as goods-in-kind in the  
3 ordinary course of production activities rather than being sold.

4 (d) In addition to the amounts includable under Subsection  
5 (c), the cost of goods sold includes the following costs in relation  
6 to the taxable entity's goods:

7 (1) deterioration of the goods;

8 (2) obsolescence of the goods;

9 (3) spoilage and abandonment, including the costs of  
10 rework labor, reclamation, and scrap;

11 (4) if the property is held for future production,  
12 preproduction direct costs allocable to the property, including  
13 costs of purchasing the goods and of storage and handling the goods,  
14 as provided by Subsections (c)(4) and (c)(5);

15 (5) postproduction direct costs allocable to the  
16 property, including storage and handling costs, as provided by  
17 Subsections (c)(4) and (c)(5);

18 (6) the cost of insurance on a plant or a facility,  
19 machinery, equipment, or materials directly used in the production  
20 of the goods;

21 (7) the cost of insurance on the produced goods;

22 (8) the cost of utilities, including electricity, gas,  
23 and water, directly used in the production of the goods;

24 (9) the costs of quality control and inspection  
25 directly allocable to the production of the goods; and

26 (10) licensing or franchise costs, including fees  
27 incurred in securing the contractual right to use a trademark,

1 corporate plan, manufacturing procedure, special recipe, or other  
2 similar right directly associated with the goods produced.

3 (e) The cost of goods sold does not include the following  
4 costs in relation to the taxable entity's goods:

5 (1) the cost of renting or leasing equipment,  
6 facilities, or real property that is not used for the production of  
7 the goods;

8 (2) selling costs, including employee expenses  
9 related to sales;

10 (3) distribution costs, including outbound  
11 transportation costs;

12 (4) advertising costs;

13 (5) idle facility expense;

14 (6) rehandling costs;

15 (7) bidding costs, which are the costs incurred in the  
16 solicitation of contracts ultimately awarded to the taxable entity;

17 (8) unsuccessful bidding costs, which are the costs  
18 incurred in the solicitation of contracts not awarded to the  
19 taxable entity;

20 (9) interest, including interest on debt incurred or  
21 continued during the production period to finance the production of  
22 the goods;

23 (10) income taxes, including local, state, federal,  
24 and foreign income taxes, and franchise taxes that are assessed on  
25 the taxable entity based on income;

26 (11) strike expenses, including costs associated with  
27 hiring employees to replace striking personnel, but not including

1 the wages of the replacement personnel, costs of security, and  
2 legal fees associated with settling strikes; and

3 (12) officers' compensation.

4 (f) A taxable entity may subtract as a cost of goods sold  
5 indirect or administrative overhead costs, including all mixed  
6 service costs, such as security services, legal services, data  
7 processing services, accounting services, personnel operations,  
8 and general financial planning and financial management costs, that  
9 it can demonstrate are allocable to the acquisition or production  
10 of goods, except that the amount subtracted may not exceed four  
11 percent of the taxable entity's total indirect or administrative  
12 overhead costs, including all mixed service costs. Any costs  
13 excluded under Subsection (e) may not be subtracted under this  
14 subsection.

15 (g) A taxable entity that is allowed a subtraction by this  
16 section for a cost of goods sold and that is subject to Section  
17 263A, 460, or 471, Internal Revenue Code, shall capitalize that  
18 cost in the same manner and to the same extent that the taxable  
19 entity is required or allowed to capitalize the cost under federal  
20 law and regulations, except for costs excluded under Subsection  
21 (e), or in accordance with Subsections (c), (d), and (f).

22 (h) A taxable entity shall determine its cost of goods sold,  
23 except as otherwise provided by this section, in accordance with  
24 the methods permitted by federal statutes and regulations. This  
25 subsection does not affect the type or category of cost of goods  
26 sold that may be subtracted under this section.

27 (i) A taxable entity may make a subtraction under this

1 section in relation to the cost of goods sold only if that entity  
2 owns the goods. The determination of whether a taxable entity is an  
3 owner is based on all of the facts and circumstances, including the  
4 various benefits and burdens of ownership vested with the taxable  
5 entity. A taxable entity furnishing labor or materials to a project  
6 for the construction, improvement, remodeling, or repair of real  
7 property is considered to be an owner of that labor or materials and  
8 may include the costs, as allowed by this section, in the  
9 computation of cost of goods sold. Solely for purposes of this  
10 section, a taxable entity shall be treated as the owner of goods  
11 being manufactured or produced by the entity under a contract with  
12 the federal government, including any subcontracts that support a  
13 contract with the federal government, notwithstanding that the  
14 Federal Acquisition Regulation may require that title or risk of  
15 loss with respect to those goods be transferred to the federal  
16 government before the manufacture or production of those goods is  
17 complete.

18 (j) A taxable entity may not make a subtraction under this  
19 section for cost of goods sold to the extent the cost of goods sold  
20 was funded by partner contributions and deducted under Subsection  
21 (c)(13).

22 (k) Notwithstanding any other provision of this section, if  
23 the taxable entity is a lending institution that offers loans to the  
24 public and elects to subtract cost of goods sold, the entity may  
25 subtract as a cost of goods sold an amount equal to interest  
26 expense.

27 (l) Notwithstanding any other provision of this section, a

1 payment made by one member of an affiliated group to another member  
2 of that affiliated group not included in the combined group may be  
3 subtracted as a cost of goods sold only if it is a transaction made  
4 at arm's length.

5 (m) In this section, "arm's length" means the standard of  
6 conduct under which entities that are not related parties and that  
7 have substantially equal bargaining power, each acting in its own  
8 interest, would negotiate or carry out a particular transaction.

9 (n) In this section, "related party" means a person,  
10 corporation, or other entity, including an entity that is treated  
11 as a pass-through or disregarded entity for purposes of federal  
12 taxation, whether the person, corporation, or entity is subject to  
13 the tax under this chapter or not, in which one person, corporation,  
14 or entity, or set of related persons, corporations, or entities,  
15 directly or indirectly owns or controls a controlling interest in  
16 another entity.

17 Sec. 171.1013. DETERMINATION OF COMPENSATION. (a) Except  
18 as otherwise provided by this section, "wages and cash  
19 compensation" means the amount entered in the Medicare wages and  
20 tips box of Internal Revenue Service Form W-2 or any subsequent form  
21 with a different number or designation that substantially provides  
22 the same information. The term also includes, to the extent not  
23 included above:

24 (1) net distributive income from partnerships and from  
25 trusts and limited liability companies treated as partnerships for  
26 federal income tax purposes, but only if the person receiving the  
27 distribution is a natural person;

1           (2) net distributive income from limited liability  
2 companies and corporations treated as S corporations for federal  
3 income tax purposes, but only if the person receiving the  
4 distribution is a natural person; and

5           (3) stock awards and stock options deducted for  
6 federal income tax purposes.

7           (b) Subject to Section 171.1014, a taxable entity that  
8 elects to subtract compensation for the purpose of computing its  
9 taxable margin under Section 171.101 may subtract an amount equal  
10 to:

11           (1) subject to the limitation in Subsection (c), all  
12 wages and cash compensation paid by the taxable entity to its  
13 officers, directors, owners, partners, and employees; and

14           (2) the cost of all benefits the taxable entity  
15 provides to its officers, directors, owners, partners, and  
16 employees, including workers' compensation benefits, health care,  
17 and retirement to the extent deductible for federal income tax  
18 purposes.

19           (c) Notwithstanding the actual amount of wages and cash  
20 compensation paid by a taxable entity to its officers, directors,  
21 owners, partners, and employees, a taxable entity may not include  
22 more than \$300,000, or the amount determined under Section 171.006,  
23 for any person in the amount of wages and cash compensation it  
24 determines under Section 171.101.

25           (d) A taxable entity that is a staff leasing services  
26 company:

27           (1) may not include as wages or cash compensation

1 payments described by Section 171.1011(k); and

2 (2) shall determine compensation as provided by this  
3 section only for the taxable entity's own employees that are not  
4 assigned employees.

5 (e) Subject to the other provisions of this section, in  
6 determining compensation, a taxable entity that is a client company  
7 that contracts with a staff leasing services company for assigned  
8 employees:

9 (1) shall include payments made to the staff leasing  
10 services company for wages and benefits for the assigned employees  
11 as if the assigned employees were actual employees of the entity;

12 (2) may not include an administrative fee charged by  
13 the staff leasing services company for the provision of the  
14 assigned employees; and

15 (3) may not include any other amount in relation to the  
16 assigned employees, including payroll taxes.

17 Sec. 171.1014. COMBINED REPORTING; AFFILIATED GROUP  
18 ENGAGED IN UNITARY BUSINESS. (a) Taxable entities that are part of  
19 an affiliated group engaged in a unitary business shall file a  
20 combined group report in lieu of individual reports based on the  
21 combined group's business. The combined group may not include a  
22 taxable entity that conducts business outside the United States if  
23 80 percent or more of the taxable entity's property and payroll, as  
24 determined by factoring under Chapter 141, are assigned to  
25 locations outside the United States. In applying Chapter 141, if  
26 either the property factor or the payroll factor is zero, the  
27 denominator is one. The combined group may not include a taxable

1 entity that conducts business outside the United States and has no  
2 property or payroll if 80 percent or more of the taxable entity's  
3 gross receipts, as determined under Sections 171.103, 171.105, and  
4 171.1055, are assigned to locations outside the United States.

5 (b) The combined group is a single taxable entity for  
6 purposes of the application of the tax imposed under this chapter.

7 (c) For purposes of Section 171.101, a combined group shall  
8 determine its total revenue by:

9 (1) determining the total revenue of each of its  
10 members as provided by Section 171.1011 as if the member were an  
11 individual taxable entity;

12 (2) adding the total revenues of the members  
13 determined under Subdivision (1) together; and

14 (3) subtracting, to the extent included under Section  
15 171.1011(c)(1)(A), (c)(2)(A), or (c)(3), items of total revenue  
16 received from a member of the combined group.

17 (d) For purposes of Section 171.101, a combined group shall  
18 make an election to subtract either cost of goods sold or  
19 compensation that applies to all of its members.

20 (e) For purposes of Section 171.101, a combined group that  
21 elects to subtract costs of goods sold shall determine that amount  
22 by:

23 (1) determining the cost of goods sold for each of its  
24 members as provided by Section 171.1012 as if the member were an  
25 individual taxable entity;

26 (2) adding the amounts of cost of goods sold  
27 determined under Subdivision (1) together; and

1           (3) subtracting from the amount determined under  
2 Subdivision (2) any cost of goods sold amounts paid from one member  
3 of the combined group to another member of the combined group, but  
4 only to the extent the corresponding item of total revenue was  
5 subtracted under Subsection (c)(3).

6           (f) For purposes of Section 171.101, a combined group that  
7 elects to subtract compensation shall determine that amount by:

8           (1) determining the compensation for each of its  
9 members as provided by Section 171.1013 as if each member were an  
10 individual taxable entity;

11           (2) adding the amounts of compensation determined  
12 under Subdivision (1) together; and

13           (3) subtracting from the amount determined under  
14 Subdivision (2) any compensation amounts paid from one member of  
15 the combined group to another member of the combined group, but only  
16 to the extent the corresponding item of total revenue was  
17 subtracted under Subsection (c)(3).

18           (g) A combined group may elect to include in the combined  
19 group an exempt entity that would be included in the group if the  
20 entity were not exempt and to treat the exempt entity as if it were a  
21 taxable entity.

22           ~~[Sec. 171.102. DETERMINATION OF TAXABLE CAPITAL OF~~  
23 ~~CORPORATION IN PROCESS OF LIQUIDATION. (a) "Corporation in the~~  
24 ~~process of liquidation" means a corporation that:~~

25           ~~[(1) adopts and pursues in good faith a plan to marshal~~  
26 ~~the assets of the corporation, to pay or settle with the~~  
27 ~~corporation's creditors and debtors, and to apportion the remaining~~

1 ~~assets of the corporation among the corporation's stockholders;~~

2 ~~[(2) adopts the plan by a resolution approved by the~~  
3 ~~corporation's board of directors and ratified by a majority of the~~  
4 ~~stockholders of record; and~~

5 ~~[(3) conducts the liquidation in the manner provided~~  
6 ~~by the law of this state to dissolve a corporation.~~

7 ~~[(b) The taxable capital of a corporation in the process of~~  
8 ~~liquidation is the difference between the amount of the~~  
9 ~~corporation's stock issued and the amount of the liquidating~~  
10 ~~dividends paid on the stock.~~

11 ~~[(c) The president and the secretary of the corporation~~  
12 ~~shall file an affidavit with the comptroller containing information~~  
13 ~~about the amount of liquidating dividends paid and a statement that~~  
14 ~~the corporation is in the process of liquidation. The plan~~  
15 ~~described by Subsection (a) of this section for the corporation's~~  
16 ~~liquidation shall be attached to and be a part of the affidavit.~~

17 ~~[(d) This section applies only to the computation of a~~  
18 ~~corporation's taxable capital under Section 171.101 of this code.]~~

19 Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS  
20 DONE IN THIS STATE FOR MARGIN [~~TAXABLE CAPITAL~~]. (a) Subject to  
21 Section 171.1055, in [~~In~~] apportioning margin [~~taxable capital~~],  
22 the gross receipts of a taxable entity [~~corporation~~] from its  
23 business done in this state is the sum of the taxable entity's  
24 [~~corporation's~~] receipts from:

25 ~~[(1) each sale of tangible personal property if the~~  
26 ~~property is delivered or shipped to a buyer in this state regardless~~  
27 ~~of the FOB point or another condition of the sale, and each sale of~~

1 ~~tangible personal property shipped from this state to a purchaser~~  
2 ~~in another state in which the seller is not subject to taxation;~~

3 ~~[(2) each service performed in this state;~~

4 ~~[(3) each rental of property situated in this state;~~

5 ~~[(4) the use of a patent, copyright, trademark,~~  
6 ~~franchise, or license in this state;~~

7 ~~[(5) each sale of real property located in this state,~~  
8 ~~including royalties from oil, gas, or other mineral interests; and~~

9 ~~[(6) other business done in this state.~~

10 ~~[Sec. 171.1032. DETERMINATION OF GROSS RECEIPTS FROM~~  
11 ~~BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS. (a) Except~~  
12 ~~for the gross receipts of a corporation that are subject to the~~  
13 ~~provisions of Section 171.1061, in apportioning taxable earned~~  
14 ~~surplus, the gross receipts of a corporation from its business done~~  
15 ~~in this state is the sum of the corporation's receipts from:]~~

16 (1) each sale of tangible personal property if the  
17 property is delivered or shipped to a buyer in this state regardless  
18 of the FOB point or another condition of the sale~~[, and each sale of~~  
19 ~~tangible personal property shipped from this state to a purchaser~~  
20 ~~in another state in which the seller is not subject to any tax on, or~~  
21 ~~measured by, net income, without regard to whether the tax is~~  
22 ~~imposed];~~

23 (2) each service performed in this state, except that  
24 receipts derived from servicing loans secured by real property are  
25 in this state if the real property is located in this state;

26 (3) each rental of property situated in this state;

27 (4) the use of a patent, copyright, trademark,

1 franchise, or license in this state;

2 (5) each sale of real property located in this state,  
3 including royalties from oil, gas, or other mineral interests; and

4 (6) ~~[each partnership or joint venture to the extent~~  
5 ~~provided by Subsection (c), and~~

6 ~~[(7)]~~ other business done in this state.

7 (b) A combined group shall include in its gross receipts  
8 computed under Subsection (a) the gross receipts of each taxable  
9 entity that is a member of the combined group and that has a nexus  
10 with this state for the purpose of taxation. ~~[A corporation shall~~  
11 ~~deduct from its gross receipts computed under Subsection (a) any~~  
12 ~~amount to the extent included under Subsection (a) because of the~~  
13 ~~application of Section 78 or Sections 951-964, Internal Revenue~~  
14 ~~Code, any amount excludable under Section 171.110(k), and dividends~~  
15 ~~received from a subsidiary, associate, or affiliated corporation~~  
16 ~~that does not transact a substantial portion of its business or~~  
17 ~~regularly maintain a substantial portion of its assets in the~~  
18 ~~United States.~~

19 ~~[(c) A corporation shall include in its gross receipts~~  
20 ~~computed under Subsection (a) the corporation's share of the gross~~  
21 ~~receipts of each partnership and joint venture of which the~~  
22 ~~corporation is a part apportioned to this state as though the~~  
23 ~~corporation directly earned the receipts, including receipts from~~  
24 ~~business done with the corporation.~~

25 ~~[Sec. 171.104. GROSS RECEIPTS FROM BUSINESS DONE IN TEXAS:~~  
26 ~~DEDUCTION FOR FOOD AND MEDICINE RECEIPTS. A corporation may deduct~~  
27 ~~from its receipts includable under Section 171.103(1) of this code~~

1 ~~the amount of the corporation's receipts from sales of the~~  
2 ~~following items, if the items are shipped from outside this state~~  
3 ~~and the receipts would be includable under Section 171.103(1) of~~  
4 ~~this code in the absence of this section.~~

5 ~~(1) food that is exempted from the Limited Sales,~~  
6 ~~Excise, and Use Tax Act by Section 151.314(a) of this code; and~~

7 ~~(2) health care supplies that are exempted from the~~  
8 ~~Limited Sales, Excise, and Use Tax Act by Section 151.313 of this~~  
9 ~~code.]~~

10       Sec. 171.105. ~~[DETERMINATION OF GROSS RECEIPTS FROM ENTIRE~~  
11 ~~BUSINESS FOR TAXABLE CAPITAL. (a) In apportioning taxable~~  
12 ~~capital, the gross receipts of a corporation from its entire~~  
13 ~~business is the sum of the corporation's receipts from:~~

14 ~~(1) each sale of the corporation's tangible personal~~  
15 ~~property;~~

16 ~~(2) each service, rental, or royalty; and~~

17 ~~(3) other business.~~

18 ~~(b) If a corporation sells an investment or capital asset,~~  
19 ~~the corporation's gross receipts from its entire business for~~  
20 ~~taxable capital include only the net gain from the sale.~~

21 ~~[Sec. 171.1051.] DETERMINATION OF GROSS RECEIPTS FROM~~  
22 ~~ENTIRE BUSINESS FOR MARGIN [TAXABLE EARNED SURPLUS]. (a) Subject~~  
23 ~~to Section 171.1055 [Except for the gross receipts of a corporation~~  
24 ~~that are subject to the provisions of Section 171.1061], in~~  
25 ~~apportioning margin [taxable earned surplus], the gross receipts of~~  
26 ~~a taxable entity [corporation] from its entire business is the sum~~  
27 ~~of the taxable entity's [corporation's] receipts from:~~

1 (1) each sale of the taxable entity's [~~corporation's~~]  
2 tangible personal property;

3 (2) each service, rental, or royalty; and

4 (3) [~~each partnership and joint venture as provided by~~  
5 ~~Subsection (d); and~~

6 [~~4~~] other business.

7 (b) If a taxable entity [~~corporation~~] sells an investment or  
8 capital asset, the taxable entity's [~~corporation's~~] gross receipts  
9 from its entire business for taxable margin [~~earned surplus~~]  
10 includes only the net gain from the sale.

11 (c) A combined group shall include in its gross receipts  
12 computed under Subsection (a) the gross receipts of each taxable  
13 entity that is a member of the combined group, without regard to  
14 whether that entity has a nexus with this state for the purpose of  
15 taxation.

16 Sec. 171.1055. EXCLUSION OF CERTAIN RECEIPTS FOR MARGIN  
17 APPORTIONMENT. (a) In apportioning margin, receipts excluded from  
18 total revenue by a taxable entity under Section 171.1011 may not be  
19 included in either the receipts of the taxable entity from its  
20 business done in this state as determined under Section 171.103 or  
21 the receipts of the taxable entity from its entire business done as  
22 determined under Section 171.105.

23 (b) In apportioning margin, receipts derived from  
24 transactions between individual members of a combined group that  
25 are excluded under Section 171.1014(c)(3) may not be included in  
26 the receipts of the taxable entity from its business done in this  
27 state as determined under Section 171.103, except that receipts

1 derived from the sale of tangible personal property between  
2 individual members of a combined group where one member party to the  
3 transaction does not have nexus in this state shall be included in  
4 the receipts of the taxable entity from its business done in this  
5 state as determined under Section 171.103 to the extent that the  
6 member of the combined group that does not have nexus in this state  
7 resells the tangible personal property without modification to a  
8 purchaser in this state.

9 (c) In apportioning margin, receipts derived from  
10 transactions between individual members of a combined group that  
11 are excluded under Section 171.1014(c)(3) may not be included in  
12 the receipts of the taxable entity from its entire business done as  
13 determined under Section 171.105. [~~A corporation shall deduct from~~  
14 ~~its gross receipts computed under Subsection (a) any amount to the~~  
15 ~~extent included in Subsection (a) because of the application of~~  
16 ~~Section 78 or Sections 951-964, Internal Revenue Code, any amount~~  
17 ~~excludable under Section 171.110(k), and dividends received from a~~  
18 ~~subsidiary, associate, or affiliated corporation that does not~~  
19 ~~transact a substantial portion of its business or regularly~~  
20 ~~maintain a substantial portion of its assets in the United States.~~

21 [~~(d) A corporation shall include in its gross receipts~~  
22 ~~computed under Subsection (a) the corporation's share of the gross~~  
23 ~~receipts of each partnership and joint venture of which the~~  
24 ~~corporation is a part.]~~

25 Sec. 171.106. APPORTIONMENT OF MARGIN [~~TAXABLE CAPITAL AND~~  
26 ~~TAXABLE EARNED SURPLUS~~] TO THIS STATE. (a) [~~Except as provided by~~  
27 ~~Subsections (c) and (d), a corporation's taxable capital is~~

1 ~~apportioned to this state to determine the amount of the tax imposed~~  
 2 ~~under Section 171.002(b)(1) by multiplying the corporation's~~  
 3 ~~taxable capital by a fraction, the numerator of which is the~~  
 4 ~~corporation's gross receipts from business done in this state, as~~  
 5 ~~determined under Section 171.103, and the denominator of which is~~  
 6 ~~the corporation's gross receipts from its entire business, as~~  
 7 ~~determined under Section 171.105.~~

8 ~~[(b)]~~ Except as provided by this section ~~[Subsections (c)~~  
 9 ~~and (d)]~~, a taxable entity's margin ~~[corporation's taxable earned~~  
 10 ~~surplus]~~ is apportioned to this state to determine the amount of tax  
 11 imposed under Section 171.002 ~~[171.002(b)(2)]~~ by multiplying the  
 12 margin ~~[taxable earned surplus]~~ by a fraction, the numerator of  
 13 which is the taxable entity's ~~[corporation's]~~ gross receipts from  
 14 business done in this state, as determined under Section 171.103  
 15 ~~[171.1032]~~, and the denominator of which is the taxable entity's  
 16 ~~[corporation's]~~ gross receipts from its entire business, as  
 17 determined under Section 171.105 ~~[171.1051]~~.

18 (b) ~~[(c)]~~ A taxable entity's margin ~~[corporation's taxable~~  
 19 ~~capital or earned surplus]~~ that is derived, directly or indirectly,  
 20 from the sale of management, distribution, or administration  
 21 services to or on behalf of a regulated investment company,  
 22 including a taxable entity ~~[corporation]~~ that includes trustees or  
 23 sponsors of employee benefit plans that have accounts in a  
 24 regulated investment company, is apportioned to this state to  
 25 determine the amount of the tax imposed under Section 171.002 by  
 26 multiplying the taxable entity's ~~[corporation's]~~ total margin  
 27 ~~[taxable capital or earned surplus]~~ from the sale of services to or

1 on behalf of a regulated investment company by a fraction, the  
2 numerator of which is the average of the sum of shares owned at the  
3 beginning of the year and the sum of shares owned at the end of the  
4 year by the investment company shareholders who are commercially  
5 domiciled in this state or, if the shareholders are individuals,  
6 are residents of this state, and the denominator of which is the  
7 average of the sum of shares owned at the beginning of the year and  
8 the sum of shares owned at the end of the year by all investment  
9 company shareholders. [~~The corporation shall make a separate~~  
10 ~~computation to allocate taxable capital and earned surplus.~~] In  
11 this subsection, "regulated investment company" has the meaning  
12 assigned by Section 851(a), Internal Revenue Code.

13 (c) [~~(d)~~] A taxable entity's margin [~~corporation's taxable~~  
14 ~~capital or taxable earned surplus~~] that is derived, directly or  
15 indirectly, from the sale of management, administration, or  
16 investment services to an employee retirement plan is apportioned  
17 to this state to determine the amount of the tax imposed under  
18 Section 171.002 by multiplying the taxable entity's [~~corporation's~~  
19 total margin [~~taxable capital or earned surplus~~] from the sale of  
20 services to an employee retirement plan company by a fraction, the  
21 numerator of which is the average of the sum of beneficiaries  
22 domiciled in Texas at the beginning of the year and the sum of  
23 beneficiaries domiciled in Texas at the end of the year, and the  
24 denominator of which is the average of the sum of all beneficiaries  
25 at the beginning of the year and the sum of all beneficiaries at the  
26 end of the year. [~~The corporation shall make a separate computation~~  
27 ~~to apportion taxable capital and earned surplus.~~] In this section,

1 "employee retirement plan" means a plan or other arrangement that  
2 is qualified under Section 401(a), Internal Revenue Code, or  
3 satisfies the requirements of Section 403, Internal Revenue Code,  
4 or a government plan described in Section 414(d), Internal Revenue  
5 Code. The term does not include an individual retirement account or  
6 individual retirement annuity within the meaning of Section 408,  
7 Internal Revenue Code.

8 ~~(d) [(e) On or before January 1, 1998, each entity~~  
9 ~~registered with the State Securities Board under The Securities Act~~  
10 ~~(Article 581, Vernon's Texas Civil Statutes) that provides~~  
11 ~~management, administration, or investment services to an employee~~  
12 ~~retirement plan, must file a report with the comptroller containing~~  
13 ~~such information as the comptroller deems necessary in order to~~  
14 ~~determine the fiscal impact of Subsection (d). The State~~  
15 ~~Securities Board and the Securities Commissioner shall cooperate~~  
16 ~~with the comptroller in obtaining the information. The Securities~~  
17 ~~Commissioner shall impose the penalties provided in The Securities~~  
18 ~~Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) against~~  
19 ~~any entity that the comptroller certifies is delinquent in the~~  
20 ~~filing of the report required by this section.~~

21 ~~[(f) On or before September 1, 1998, the comptroller shall~~  
22 ~~issue a report which evaluates the statewide fiscal impact of~~  
23 ~~Subsection (d). If the comptroller determines that implementing~~  
24 ~~Subsection (d) will not have a negative fiscal impact on this state,~~  
25 ~~Subsection (d) shall be effective for reports or returns originally~~  
26 ~~due on or after January 1, 1999. If the comptroller determines that~~  
27 ~~there will be a negative fiscal impact, that subsection shall not be~~

1 ~~implemented.~~

2 ~~[(g) If this Act and another Act of the 75th Legislature,~~  
3 ~~Regular Session, 1997, make the same substantive change from the~~  
4 ~~current law but differ in text, this Act prevails regardless of the~~  
5 ~~relative dates of enactment.~~

6 ~~[(h)]~~ A banking corporation shall exclude from the  
7 numerator of the bank's apportionment factor interest earned on  
8 federal funds and interest earned on securities sold under an  
9 agreement to repurchase that are held in this state in a  
10 correspondent bank that is domiciled in this state. In this  
11 subsection, "correspondent" has the meaning assigned by 12 C.F.R.  
12 Section 206.2(c).

13 (e) ~~[(i)]~~ Receipts from services that a defense  
14 readjustment project performs in a defense economic readjustment  
15 zone are not receipts from business done in this state.

16 ~~[Sec. 171.1061. ALLOCATION OF CERTAIN TAXABLE EARNED~~  
17 ~~SURPLUS TO THIS STATE. An item of income included in a~~  
18 ~~corporation's taxable earned surplus, except that portion derived~~  
19 ~~from dividends and interest, that a state, other than this state, or~~  
20 ~~a country, other than the United States, cannot tax because the~~  
21 ~~activities generating that item of income do not have sufficient~~  
22 ~~unitary connection with the corporation's other activities~~  
23 ~~conducted within that state or country under the United States~~  
24 ~~Constitution, is allocated to this state if the corporation's~~  
25 ~~commercial domicile is in this state. Income that can only be~~  
26 ~~allocated to the state of commercial domicile because the income~~  
27 ~~has insufficient unitary connection with any other state or country~~

1 ~~shall be allocated to this state or another state or country net of~~  
2 ~~expenses related to that income. A portion of a corporation's~~  
3 ~~taxable earned surplus allocated to this state under this section~~  
4 ~~may not be apportioned under Section 171.110(a)(2).]~~

5           Sec. 171.107. DEDUCTION OF COST OF SOLAR ENERGY DEVICE FROM  
6 MARGIN [~~TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS~~] APPORTIONED TO  
7 THIS STATE. (a) In this section, "solar energy device" means a  
8 system or series of mechanisms designed primarily to provide  
9 heating or cooling or to produce electrical or mechanical power by  
10 collecting and transferring solar-generated energy. The term  
11 includes a mechanical or chemical device that has the ability to  
12 store solar-generated energy for use in heating or cooling or in the  
13 production of power.

14           (b) A taxable entity [~~corporation~~] may deduct from [~~its~~  
15 ~~apportioned taxable capital the amortized cost of a solar energy~~  
16 ~~device or from~~] its apportioned margin [~~taxable earned surplus~~] 10  
17 percent of the amortized cost of a solar energy device if:

18           (1) the device is acquired by the taxable entity  
19 [~~corporation~~] for heating or cooling or for the production of  
20 power;

21           (2) the device is used in this state by the taxable  
22 entity [~~corporation~~]; and

23           (3) the cost of the device is amortized in accordance  
24 with Subsection (c) [~~of this section~~].

25           (c) The amortization of the cost of a solar energy device  
26 must:

27           (1) be for a period of at least 60 months;

1 (2) provide for equal monthly amounts;

2 (3) begin on the month in which the device is placed in  
3 service in this state; and

4 (4) cover only a period in which the device is in use  
5 in this state.

6 (d) A taxable entity [~~corporation~~] that makes a deduction  
7 under this section shall file with the comptroller an amortization  
8 schedule showing the period in which a deduction is to be made. On  
9 the request of the comptroller, the taxable entity [~~corporation~~]  
10 shall file with the comptroller proof of the cost of the solar  
11 energy device or proof of the device's operation in this state.

12 [~~(c) A corporation may elect to make the deduction~~  
13 ~~authorized by this section either from apportioned taxable capital~~  
14 ~~or apportioned taxable earned surplus for each separate regular~~  
15 ~~annual period. An election for an initial period applies to the~~  
16 ~~second tax period and to the first regular annual period.]~~

17 Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM  
18 MARGIN [~~TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS~~] APPORTIONED TO  
19 THIS STATE. (a) In this section, "clean coal project" has the  
20 meaning assigned by Section 5.001, Water Code.

21 (b) A taxable entity [~~corporation~~] may deduct from its  
22 apportioned margin [~~taxable capital the amortized cost of equipment~~  
23 ~~or from its apportioned taxable earned surplus~~] 10 percent of the  
24 amortized cost of equipment:

25 (1) that is used in a clean coal project;

26 (2) that is acquired by the taxable entity  
27 [~~corporation~~] for use in generation of electricity, production of

1 process steam, or industrial production;

2 (3) that the taxable entity [~~corporation~~] uses in this  
3 state; and

4 (4) the cost of which is amortized in accordance with  
5 Subsection (c).

6 (c) The amortization of the cost of capital used in a clean  
7 coal project must:

8 (1) be for a period of at least 60 months;

9 (2) provide for equal monthly amounts;

10 (3) begin in the month during which the equipment is  
11 placed in service in this state; and

12 (4) cover only a period during which the equipment is  
13 used in this state.

14 (d) A taxable entity [~~corporation~~] that makes a deduction  
15 under this section shall file with the comptroller an amortization  
16 schedule showing the period for which the deduction is to be made.  
17 On the request of the comptroller, the taxable entity [~~corporation~~]  
18 shall file with the comptroller proof of the cost of the equipment  
19 or proof of the equipment's operation in this state.

20 [~~(c) A corporation may elect to make the deduction~~  
21 ~~authorized by this section from apportioned taxable capital or~~  
22 ~~apportioned taxable earned surplus, but not from both, for each~~  
23 ~~separate regular annual period. An election for an initial period~~  
24 ~~applies to the second tax period and to the first regular annual~~  
25 ~~period.~~

26 [Sec. 171.109. ~~SURPLUS. (a) In this chapter:~~

27 [~~(1) "Surplus" means the net assets of a corporation~~

1 ~~minus its stated capital. For a limited liability company,~~  
2 ~~"surplus" means the net assets of the company minus its members'~~  
3 ~~contributions. Surplus includes unrealized, estimated, or~~  
4 ~~contingent losses or obligations or any writedown of assets other~~  
5 ~~than those listed in Subsection (i) of this section net of~~  
6 ~~appropriate income tax provisions. The definition under this~~  
7 ~~subdivision does not apply to earned surplus.~~

8 ~~[(2) "Net assets" means the total assets of a~~  
9 ~~corporation minus its total debts.~~

10 ~~[(3) "Debt" means any legally enforceable obligation~~  
11 ~~measured in a certain amount of money which must be performed or~~  
12 ~~paid within an ascertainable period of time or on demand.~~

13 ~~[(a-1) A legally enforceable obligation that requires the~~  
14 ~~return of a like-kind property that was borrowed will be considered~~  
15 ~~debt if it is a liability according to generally accepted~~  
16 ~~accounting principles and if the return must be made within an~~  
17 ~~ascertainable period of time or on demand. The amount that will be~~  
18 ~~considered debt is the fair market value measured on the last day on~~  
19 ~~which the report is based as required by Section 171.153. For~~  
20 ~~purposes of this subsection, "like-kind property" means the same~~  
21 ~~quantity, quality, and nature or character as the property~~  
22 ~~borrowed.~~

23 ~~[(b) Except as otherwise provided in this section, a~~  
24 ~~corporation must compute its surplus, assets, and debts according~~  
25 ~~to generally accepted accounting principles. If generally accepted~~  
26 ~~accounting principles are unsettled or do not specify an accounting~~  
27 ~~practice for a particular purpose related to the computation of~~

1 ~~surplus, assets, or debts, the comptroller by rule may establish~~  
2 ~~rules to specify the applicable accounting practice for that~~  
3 ~~purpose.~~

4 ~~[(c) A corporation whose taxable capital is less than \$1~~  
5 ~~million may report its surplus according to the method used in the~~  
6 ~~corporation's most recent federal income tax return originally due~~  
7 ~~on or before the date on which the corporation's franchise tax~~  
8 ~~report is originally due. In determining if taxable capital is less~~  
9 ~~than \$1 million, the corporation shall apply the methods the~~  
10 ~~corporation used in computing that federal income tax return unless~~  
11 ~~another method is required under this chapter.~~

12 ~~[(d) A corporation shall report its surplus based solely on~~  
13 ~~its own financial condition. Consolidated reporting of surplus is~~  
14 ~~prohibited.~~

15 ~~[(e) Unless the provisions of Section 171.111 apply due to~~  
16 ~~an election under that section, a corporation may not change the~~  
17 ~~accounting methods used to compute its surplus more often than once~~  
18 ~~every four years without the written consent of the comptroller. A~~  
19 ~~change in accounting methods is not justified solely because it~~  
20 ~~results in a reduction of tax liability.~~

21 ~~[(f) A corporation declaring dividends shall exclude those~~  
22 ~~dividends from its taxable capital, and a corporation receiving~~  
23 ~~dividends shall include those dividends in its gross receipts and~~  
24 ~~taxable capital as of the earlier of:~~

25 ~~[(1) the date the dividends are declared, if the~~  
26 ~~dividends are actually paid within one year after the declaration~~  
27 ~~date; or~~

1           ~~[(2) the date the dividends are actually paid.~~

2           ~~[(g) All oil and gas exploration and production activities~~  
3 ~~conducted by a corporation that reports its surplus according to~~  
4 ~~generally accepted accounting principles as required or permitted~~  
5 ~~by this chapter must be reported according to the successful~~  
6 ~~efforts or the full cost method of accounting.~~

7           ~~[(h) A parent or investor corporation must use the cost~~  
8 ~~method of accounting in reporting and calculating the franchise tax~~  
9 ~~on its investments in subsidiary corporations or other investees.~~  
10 ~~The retained earnings of a subsidiary corporation or other investee~~  
11 ~~before acquisition by the parent or investor corporation may not be~~  
12 ~~excluded from the cost of the subsidiary corporation or investee to~~  
13 ~~the parent or investor corporation and must be included by the~~  
14 ~~parent or investor corporation in calculating its surplus.~~

15           ~~[(i) The following accounts may also be excluded from~~  
16 ~~surplus, to the extent they are in conformance with generally~~  
17 ~~accepted accounting principles or the appropriate federal income~~  
18 ~~tax method, whichever is applicable:~~

19           ~~[(1) a reserve or allowance for uncollectable~~  
20 ~~accounts, and~~

21           ~~[(2) a contra-asset account for depletion,~~  
22 ~~depreciation, or amortization.~~

23           ~~[(j) A corporation may not exclude from surplus:~~

24           ~~[(1) liabilities for compensation and other benefits~~  
25 ~~provided to employees, other than wages, that are not debt as of the~~  
26 ~~end of the accounting period on which the taxable capital component~~  
27 ~~is based, including retirement, medical, insurance,~~

1 ~~postretirement, and other similar benefits; and~~

2 ~~[(2) deferred investment tax credits.~~

3 ~~[(k) Notwithstanding any other provision in this chapter, a~~  
4 ~~corporation subject to the tax imposed by this chapter shall use~~  
5 ~~double entry bookkeeping to account for all transactions that~~  
6 ~~affect the computation of that tax.~~

7 ~~[(l) The "first in-first out" and "last in-first out"~~  
8 ~~methods of accounting are acceptable methods for computing surplus.~~

9 ~~[(m) A corporation may not use the push-down method of~~  
10 ~~accounting in computing or reporting its surplus.~~

11 ~~[(n) A corporation must use the equity method of accounting~~  
12 ~~when reporting an investment in a partnership or joint venture.~~

13 ~~[Sec. 171.110. DETERMINATION OF NET TAXABLE EARNED SURPLUS.~~

14 ~~(a) The net taxable earned surplus of a corporation is computed by:~~

15 ~~[(1) determining the corporation's reportable federal~~  
16 ~~taxable income, subtracting from that amount any amount excludable~~  
17 ~~under Subsection (k), any amount included in reportable federal~~  
18 ~~taxable income under Section 78 or Sections 951-964, Internal~~  
19 ~~Revenue Code, and dividends received from a subsidiary, associate,~~  
20 ~~or affiliated corporation that does not transact a substantial~~  
21 ~~portion of its business or regularly maintain a substantial portion~~  
22 ~~of its assets in the United States, and adding to that amount any~~  
23 ~~compensation of officers or directors, or if a bank, any~~  
24 ~~compensation of directors and executive officers, to the extent~~  
25 ~~excluded in determining federal taxable income to determine the~~  
26 ~~corporation's taxable earned surplus;~~

27 ~~[(2) apportioning the corporation's taxable earned~~

1 ~~surplus to this state as provided by Section 171.106(b) or (c), as~~  
2 ~~applicable, to determine the corporation's apportioned taxable~~  
3 ~~earned surplus;~~

4 ~~[(3) adding the corporation's taxable earned surplus~~  
5 ~~allocated to this state as provided by Section 171.1061; and~~

6 ~~[(4) subtracting from that amount any allowable~~  
7 ~~deductions and any business loss that is carried forward to the tax~~  
8 ~~reporting period and deductible under Subsection (e).~~

9 ~~[(b) Except as provided by Subsection (c), a corporation is~~  
10 ~~not required to add the compensation of officers or directors as~~  
11 ~~required by Subsection (a)(1) if the corporation is:~~

12 ~~[(1) a corporation that has not more than 35~~  
13 ~~shareholders; or~~

14 ~~[(2) an S corporation, as that term is defined by~~  
15 ~~Section 1361, Internal Revenue Code.~~

16 ~~[(c) A subsidiary corporation may not claim the exclusion~~  
17 ~~under Subsection (b) if it has a parent corporation that does not~~  
18 ~~qualify for the exclusion. For purposes of this subsection, a~~  
19 ~~corporation qualifies as a parent if it ultimately controls the~~  
20 ~~subsidiary, even if the control arises through a series or group of~~  
21 ~~other subsidiaries or entities. Control is presumed if a parent~~  
22 ~~corporation directly or indirectly owns, controls, or holds a~~  
23 ~~majority of the outstanding voting stock of a corporation or~~  
24 ~~ownership interests in another entity.~~

25 ~~[(d) A corporation's reportable federal taxable income is~~  
26 ~~the corporation's federal taxable income after Schedule C special~~  
27 ~~deductions and before net operating loss deductions as computed~~

1 ~~under the Internal Revenue Code, except that an S corporation's~~  
2 ~~reportable federal taxable income is the amount of the income~~  
3 ~~reportable to the Internal Revenue Service as taxable to the~~  
4 ~~corporation's shareholders.~~

5 ~~[(c) For purposes of this section, a business loss is any~~  
6 ~~negative amount after apportionment and allocation. The business~~  
7 ~~loss shall be carried forward to the year succeeding the loss year~~  
8 ~~as a deduction to net taxable earned surplus, then successively to~~  
9 ~~the succeeding four taxable years after the loss year or until the~~  
10 ~~loss is exhausted, whichever occurs first, but for not more than~~  
11 ~~five taxable years after the loss year. Notwithstanding the~~  
12 ~~preceding sentence, a business loss from a tax year that ends before~~  
13 ~~January 1, 1991, may not be used to reduce net taxable earned~~  
14 ~~surplus. A business loss can be carried forward only by the~~  
15 ~~corporation that incurred the loss and cannot be transferred to or~~  
16 ~~claimed by any other entity, including the survivor of a merger if~~  
17 ~~the loss was incurred by the corporation that did not survive the~~  
18 ~~merger.~~

19 ~~[(f) A corporation may use either the "first in-first out"~~  
20 ~~or "last in-first out" method of accounting to compute its net~~  
21 ~~taxable earned surplus, but only to the extent that the corporation~~  
22 ~~used that method on its most recent federal income tax report~~  
23 ~~originally due on or before the date on which the corporation's~~  
24 ~~franchise tax report is originally due.~~

25 ~~[(g) For purposes of this section, an approved Employee~~  
26 ~~Stock Ownership Plan controlling a minority interest and voted~~  
27 ~~through a single trustee shall be considered one shareholder.~~

1           ~~[(h) A corporation shall report its net taxable earned~~  
2 ~~surplus based solely on its own financial condition. Consolidated~~  
3 ~~reporting is prohibited.~~

4           ~~[(i) For purposes of this section, any person designated as~~  
5 ~~an officer is presumed to be an officer if that person:~~

6                     ~~[(1) holds an office created by the board of directors~~  
7 ~~or under the corporate charter or bylaws; and~~

8                     ~~[(2) has legal authority to bind the corporation with~~  
9 ~~third parties by executing contracts or other legal documents.~~

10           ~~[(j) A corporation may rebut the presumption described in~~  
11 ~~Subsection (i) that a person is an officer if it conclusively shows,~~  
12 ~~through the person's job description or other documentation, that~~  
13 ~~the person does not participate or have authority to participate in~~  
14 ~~significant policy making aspects of the corporate operations.~~

15           ~~[(k) Dividends and interest received from federal~~  
16 ~~obligations are not included in earned surplus or gross receipts~~  
17 ~~for earned surplus purposes.~~

18           ~~[(l) In this section:~~

19                     ~~[(1) "Federal obligations" means:~~

20                             ~~[(A) stocks and other direct obligations of, and~~  
21 ~~obligations unconditionally guaranteed by, the United States~~  
22 ~~government and United States government agencies; and~~

23                             ~~[(B) direct obligations of a United States~~  
24 ~~government-sponsored agency.~~

25                     ~~[(2) "Obligation" means any bond, debenture,~~  
26 ~~security, mortgage-backed security, pass-through certificate, or~~  
27 ~~other evidence of indebtedness of the issuing entity. The term does~~

1 ~~not include a deposit, a repurchase agreement, a loan, a lease, a~~  
2 ~~participation in a loan or pool of loans, a loan collateralized by~~  
3 ~~an obligation of a United States government agency, or a loan~~  
4 ~~guaranteed by a United States government agency.~~

5 ~~[(3) "United States government" means any department~~  
6 ~~or ministry of the federal government, including a federal reserve~~  
7 ~~bank. The term does not include a state or local government, a~~  
8 ~~commercial enterprise owned wholly or partly by the United States~~  
9 ~~government, or a local governmental entity or commercial enterprise~~  
10 ~~whose obligations are guaranteed by the United States government.~~

11 ~~[(4) "United States government agency" means an~~  
12 ~~instrumentality of the United States government whose obligations~~  
13 ~~are fully and explicitly guaranteed as to the timely payment of~~  
14 ~~principal and interest by the full faith and credit of the United~~  
15 ~~States government. The term includes the Government National~~  
16 ~~Mortgage Association, the Department of Veterans Affairs, the~~  
17 ~~Federal Housing Administration, the Farmers Home Administration,~~  
18 ~~the Export-Import Bank, the Overseas Private Investment~~  
19 ~~Corporation, the Commodity Credit Corporation, the Small Business~~  
20 ~~Administration, and any successor agency.~~

21 ~~[(5) "United States government-sponsored agency"~~  
22 ~~means an agency originally established or chartered by the United~~  
23 ~~States government to serve public purposes specified by the United~~  
24 ~~States Congress but whose obligations are not explicitly guaranteed~~  
25 ~~by the full faith and credit of the United States government. The~~  
26 ~~term includes the Federal Home Loan Mortgage Corporation, the~~  
27 ~~Federal National Mortgage Association, the Farm Credit System, the~~

1 ~~Federal Home Loan Bank System, the Student Loan Marketing~~  
2 ~~Association, and any successor agency.~~

3 ~~[Sec. 171.111. TEMPORARY CREDIT ON NET TAXABLE EARNED~~  
4 ~~SURPLUS. (a) Not later than March 1, 1992, a corporation may~~  
5 ~~notify the comptroller in writing of its intent to preserve its~~  
6 ~~right to take a credit in an amount allowed by this section on the~~  
7 ~~tax due on net taxable earned surplus. The comptroller may not~~  
8 ~~grant an extension. The corporation may thereafter elect to claim~~  
9 ~~the credit for the current year and future year at or before the~~  
10 ~~original due date of any report due after January 1, 1992, until the~~  
11 ~~corporation revokes the election or this section expires, whichever~~  
12 ~~is earlier. A corporation may claim the credit for not more than 20~~  
13 ~~consecutive privilege periods beginning with the first report due~~  
14 ~~under this chapter after January 1, 1992. A corporation may make~~  
15 ~~only one election under this section and the election may not be~~  
16 ~~conveyed, assigned, or transferred to another entity.~~

17 ~~[(b) The credit allowed under this section for any privilege~~  
18 ~~period is computed by:~~

19 ~~[(1) determining the amount, as of the end of the~~  
20 ~~corporation's accounting year ending in 1991, that is the~~  
21 ~~difference between the basis used for financial accounting purposes~~  
22 ~~and the basis used for federal income tax purposes of an asset or a~~  
23 ~~liability that at some future date will reverse;~~

24 ~~[(2) apportioning the amount determined under~~  
25 ~~Subdivision (1) to this state in the same manner earned surplus is~~  
26 ~~apportioned under Section 171.106(b) or (c), as applicable, on the~~  
27 ~~first report due on or after January 1, 1992;~~

1           ~~[(3) multiplying the amount determined under~~  
2 ~~Subdivision (2) by five percent; and~~

3           ~~[(4) multiplying the amount determined under~~  
4 ~~Subdivision (3) by the tax rate prescribed by Section~~  
5 ~~171.002(a)(2).~~

6           ~~[(c) In computing the amount under Subsection (b)(1), the~~  
7 ~~corporation may not consider differences that result from deferred~~  
8 ~~investment tax credits, allowances for funds used during~~  
9 ~~construction, or any other timing difference for which a deferred~~  
10 ~~tax liability is not required under generally accepted accounting~~  
11 ~~principles.~~

12           ~~[(d) After making the election under Subsection (a) the~~  
13 ~~corporation must, for purposes of computing its taxable capital~~  
14 ~~under this chapter, use the same accounting methods under generally~~  
15 ~~accepted accounting principles to account for the assets and~~  
16 ~~liabilities that determine the amount of the credit that the~~  
17 ~~corporation uses to compute the credit. Notwithstanding Section~~  
18 ~~171.109(c), if a corporation changes an accounting method for an~~  
19 ~~asset or liability that determines, in whole or in part, the amount~~  
20 ~~of the credit during the period the election is in effect, the~~  
21 ~~election is automatically revoked.~~

22           ~~[(e) A corporation that notifies the comptroller of its~~  
23 ~~intent to preserve its right to take a credit allowed by this~~  
24 ~~section shall submit with its notice of intent a statement of the~~  
25 ~~amount determined under Subsection (b)(1). The comptroller may~~  
26 ~~request that the corporation submit in the annual report for each~~  
27 ~~succeeding privilege period in which the corporation is eligible to~~

1 ~~take a credit information relating to the amount determined under~~  
2 ~~Subsection (b)(1). The corporation shall submit in the form and~~  
3 ~~content the comptroller requires any information relating to the~~  
4 ~~assets and liabilities that determine the amount of the credit, the~~  
5 ~~amount determined under Subsection (b)(1), or any other matter~~  
6 ~~relevant to the computation of the credit for which the corporation~~  
7 ~~is eligible.~~

8 ~~[(f) A credit allowed under this section may not be carried~~  
9 ~~forward or backward or used to create a business loss carryover~~  
10 ~~under Section 171.110.~~

11 ~~[(g) A corporation may not use a credit allowed under this~~  
12 ~~section in connection with the computation of the corporation's tax~~  
13 ~~on net taxable capital.~~

14 ~~[(h) In addition to the tax imposed by Section 171.002, an~~  
15 ~~additional tax is imposed on each corporation during each year the~~  
16 ~~corporation takes the credit allowed under this section. The~~  
17 ~~additional tax is equal to 0.2 percent of the corporation's net~~  
18 ~~taxable capital per year of privilege period.~~

19 ~~[(i) This section expires September 1, 2012.~~

20 ~~[Sec. 171.112. GROSS RECEIPTS FOR TAXABLE CAPITAL. (a) For~~  
21 ~~purposes of this section, "gross receipts" means all revenues that~~  
22 ~~would be recognized annually under a generally accepted accounting~~  
23 ~~principles method of accounting, without deduction for the cost of~~  
24 ~~property sold, materials used, labor performed, or other costs~~  
25 ~~incurred, unless otherwise specifically provided in this chapter.~~

26 ~~[(b) Except as otherwise provided in this section, a~~  
27 ~~corporation must compute gross receipts in accordance with~~

1 ~~generally accepted accounting principles. If generally accepted~~  
2 ~~accounting principles are unsettled or do not specify an accounting~~  
3 ~~practice for a particular purpose related to the computation of~~  
4 ~~gross receipts, the comptroller by rule may establish rules to~~  
5 ~~specify the applicable accounting practice.~~

6 ~~[(c) A corporation whose taxable capital is less than \$1~~  
7 ~~million may report its gross receipts according to the method used~~  
8 ~~in the corporation's most recent federal income tax return~~  
9 ~~originally due on or before the date on which the corporation's~~  
10 ~~franchise tax report is originally due. In determining if taxable~~  
11 ~~capital is less than \$1 million, the corporation shall apply the~~  
12 ~~methods the corporation used in computing that federal income tax~~  
13 ~~return unless another method is required under this chapter.~~

14 ~~[(d) A corporation shall report its gross receipts based~~  
15 ~~solely on its own financial condition. Consolidated reporting is~~  
16 ~~prohibited.~~

17 ~~[(e) Unless the provisions of Section 171.111 apply due to~~  
18 ~~an election under that section, a corporation may not change its~~  
19 ~~accounting methods used to calculate gross receipts more often than~~  
20 ~~once every four years without the express written consent of the~~  
21 ~~comptroller. A change in accounting methods is not justified~~  
22 ~~solely because it results in a reduction of tax liability.~~

23 ~~[(f) Notwithstanding any other provision in this chapter, a~~  
24 ~~corporation subject to the tax imposed by this chapter shall use~~  
25 ~~double entry bookkeeping to account for all transactions that~~  
26 ~~affect the computation of that tax.~~

27 ~~[(g) Chapter 141 does not apply to this chapter.~~

1       ~~[(h) Except as otherwise provided by this section, a~~  
2       ~~corporation shall use the same accounting methods to apportion its~~  
3       ~~taxable capital as it used to compute its taxable capital.]~~

4       Sec. 171.1121. GROSS RECEIPTS FOR MARGIN [~~TAXABLE EARNED~~  
5       ~~SURPLUS~~]. (a) For purposes of this section, "gross receipts" means  
6       all revenues reportable by a taxable entity [~~corporation~~] on its  
7       federal tax return, without deduction for the cost of property  
8       sold, materials used, labor performed, or other costs incurred,  
9       unless otherwise specifically provided in this chapter. [~~"Gross~~  
10       ~~receipts" does not include revenues that are not included in~~  
11       ~~taxable earned surplus. For example, Schedule C special deductions~~  
12       ~~and any amounts subtracted from reportable federal taxable income~~  
13       ~~under Section 171.110(a)(1) are not included in taxable earned~~  
14       ~~surplus and therefore are not considered gross receipts.]~~

15       (b) Except as otherwise provided by this section, a taxable  
16       entity [~~corporation~~] shall use the same accounting methods to  
17       apportion margin [~~taxable earned surplus~~] as used in computing  
18       reportable federal taxable income.

19       (c) A taxable entity [~~A corporation shall report its gross~~  
20       ~~receipts based solely on its own financial condition. Consolidated~~  
21       ~~reporting is prohibited.~~

22       ~~[(d) Unless the provisions of Section 171.111 apply due to~~  
23       ~~an election under that section, a corporation]~~ may not change its  
24       accounting methods used to calculate gross receipts more often than  
25       once every four years without the express written consent of the  
26       comptroller. A change in accounting methods is not justified  
27       solely because it results in a reduction of tax liability.

1           ~~[(c) A corporation's share of a partnership's gross receipts~~  
2 ~~that is included in the corporation's federal taxable income must~~  
3 ~~be used in computing the corporation's gross receipts under this~~  
4 ~~section. Unless otherwise provided by this chapter, a corporation~~  
5 ~~may not deduct costs incurred from the corporation's share of a~~  
6 ~~partnership's gross receipts. The gross receipts must be~~  
7 ~~apportioned as though the corporation directly earned them.~~

8           ~~[Sec. 171.113. ALTERNATE METHOD OF DETERMINING TAXABLE~~  
9 ~~CAPITAL AND GROSS RECEIPTS FOR CERTAIN CORPORATIONS. (a) This~~  
10 ~~section applies only to:~~

11           ~~[(1) a corporation organized as a close corporation~~  
12 ~~under Part 12, Texas Business Corporation Act, that has not more~~  
13 ~~than 35 shareholders;~~

14           ~~[(2) a foreign corporation organized under the close~~  
15 ~~corporation law of another state that has not more than 35~~  
16 ~~shareholders; and~~

17           ~~[(3) an S corporation as that term is defined by~~  
18 ~~Section 1361, Internal Revenue Code of 1986 (26 U.S.C. Section~~  
19 ~~1361).~~

20           ~~[(b) A corporation to which this section applies may elect~~  
21 ~~to compute its surplus, assets, debts, and gross receipts according~~  
22 ~~to the method the corporation uses to report its federal income tax~~  
23 ~~instead of as provided by Sections 171.109(b) and (g) and Section~~  
24 ~~171.112(b). This section does not affect the application of the~~  
25 ~~other subsections of Sections 171.109 and 171.112 and other~~  
26 ~~provisions of this chapter to a corporation making the election.~~

27           ~~[(c) The comptroller may adopt rules as necessary to specify~~

1 ~~the reporting requirements for corporations to which this section~~  
2 ~~applies.~~

3 ~~[(d) This section does not apply to a subsidiary corporation~~  
4 ~~unless it applies to the parent corporation of the subsidiary.~~

5 ~~[(e) The election under Subsection (b) becomes effective~~  
6 ~~when written notice of the election is received by the comptroller~~  
7 ~~from the corporation. An election under Subsection (b) must be~~  
8 ~~postmarked not later than the due date for the electing~~  
9 ~~corporation's franchise tax report to which the election applies.]~~

10 SECTION 4. Subchapter D, Chapter 171, Tax Code, is amended  
11 to read as follows:

12 SUBCHAPTER D. PAYMENT OF TAX

13 Sec. 171.151. PRIVILEGE PERIOD COVERED BY TAX. The  
14 franchise tax shall be paid for each of the following:

15 (1) an initial period beginning on the taxable  
16 entity's [~~corporation's~~] beginning date and ending on the day  
17 before the first anniversary of the beginning date;

18 (2) a second period beginning on the first anniversary  
19 of the beginning date and ending on December 31 following that date;  
20 and

21 (3) after the initial and second periods have expired,  
22 a regular annual period beginning each year on January 1 and ending  
23 the following December 31.

24 Sec. 171.152. DATE ON WHICH PAYMENT IS DUE. (a) Payment of  
25 the tax covering the initial period is due within 90 days after the  
26 date that the initial period ends or, if applicable, within 91 days  
27 after the date of the merger.

1 (b) Payment of the tax covering the second period is due on  
2 the same date as the tax covering the initial period.

3 (c) Payment of the tax covering the regular annual period is  
4 due May 15, of each year after the beginning of the regular annual  
5 period. However, if the first anniversary of the taxable entity's  
6 ~~[corporation's]~~ beginning date is after October 3 and before  
7 January 1, the payment of the tax covering the first regular annual  
8 period is due on the same date as the tax covering the initial  
9 period.

10 ~~[Sec. 171.153. BUSINESS ON WHICH TAX ON NET TAXABLE CAPITAL~~  
11 ~~IS BASED. (a) The tax covering the initial period is reported on~~  
12 ~~the initial report and is based on the business done by the~~  
13 ~~corporation during the period beginning on the corporation's~~  
14 ~~beginning date and:~~

15 ~~[(1) ending on the last accounting period ending date~~  
16 ~~that is at least six months after the beginning date and at least 60~~  
17 ~~days before the original due date of the initial report, or~~

18 ~~[(2) if there is no such period ending date in~~  
19 ~~Subdivision (1) of this subsection, then ending on the day that is~~  
20 ~~the last day of a calendar month and that is nearest to the end of~~  
21 ~~the corporation's first year of business, or~~

22 ~~[(3) ending on the day after the merger occurs, for the~~  
23 ~~survivor of a merger which occurs after the day on which the tax is~~  
24 ~~based in Subdivision (1) or Subdivision (2), whichever is~~  
25 ~~applicable, of Subsection (a) and before January 1, of the year an~~  
26 ~~initial report is due by the survivor.~~

27 ~~[(b) The tax covering the second period is reported on the~~

1 ~~initial report and is based on the same business on which the tax~~  
2 ~~covering the initial period is based and is to be prorated based on~~  
3 ~~the length of the second period.~~

4 ~~[(c) The tax covering the regular annual period is based on~~  
5 ~~the business done by the corporation during its last accounting~~  
6 ~~period that ends in the year before the year in which the tax is due,~~  
7 ~~unless a corporation is the survivor of a merger which occurs~~  
8 ~~between the end of its last accounting period in the year before the~~  
9 ~~report year and January 1 of the report year, in which case the tax~~  
10 ~~will be based on the financial condition of the surviving~~  
11 ~~corporation for the 12-month period ending on the day after the~~  
12 ~~merger. However, if the first anniversary of the corporation's~~  
13 ~~beginning date is after October 3 and before January 1, the tax~~  
14 ~~covering the first regular annual period is based on the same~~  
15 ~~business on which the tax covering the initial period is based and~~  
16 ~~is reported on the initial report.~~

17 ~~[Sec. 171.1531. CREDIT FOR SURVIVOR OF MERGER. (a) "Credit~~  
18 ~~period" means the period from the date of the merger or the date the~~  
19 ~~survivor was required to pay franchise tax, whichever is later,~~  
20 ~~through the end of the privilege period for which tax was actually~~  
21 ~~paid by the nonsurvivors.~~

22 ~~[(b) The survivor of a merger is entitled to a credit~~  
23 ~~against the tax computed on its net taxable capital under Section~~  
24 ~~171.002(b)(1) in the amount of the franchise tax computed on net~~  
25 ~~taxable capital paid by the nonsurvivors for the credit period,~~  
26 ~~provided the tax computed on net taxable capital paid by the~~  
27 ~~survivor for the credit period is based on the survivor's financial~~

1 ~~condition after the merger. Only a survivor that is subject to the~~  
2 ~~franchise tax is entitled to the merger credit. The merger credit~~  
3 ~~shall be allocated among survivors based on net taxable capital~~  
4 ~~reported, and as provided by Section 171.153.~~

5 ~~[(c) The credit will be limited to the lesser of the amount~~  
6 ~~of tax on net taxable capital paid for the credit period by the~~  
7 ~~survivor or by the nonsurvivors.]~~

8 Sec. 171.1532. BUSINESS ON WHICH TAX ON NET TAXABLE MARGIN  
9 ~~[EARNED SURPLUS]~~ IS BASED. (a) The tax covering the privilege  
10 periods included on the initial report~~[, as required by Section~~  
11 ~~171.153,]~~ is based on the business done by the taxable entity  
12 ~~[corporation]~~ during the period beginning on the taxable entity's  
13 ~~[corporation's]~~ beginning date and:

14 (1) ending on the last accounting period ending date  
15 that is at least 60 days before the original due date of the initial  
16 report; or

17 (2) if there is no such period ending date in  
18 Subdivision (1) ~~[of this subsection]~~, then ending on the day that is  
19 the last day of a calendar month and that is nearest to the end of  
20 the taxable entity's ~~[corporation's]~~ first year of business.

21 (b) The tax covering the regular annual period, other than a  
22 regular annual period included on the initial report, is based on  
23 the business done by the taxable entity ~~[corporation]~~ during the  
24 period beginning with the day after the last date upon which ~~[net]~~  
25 taxable margin ~~[earned surplus]~~ on a previous report was based and  
26 ending with its last accounting period ending date for federal  
27 income tax purposes in the year before the year in which the report

1 is originally due.

2           Sec. 171.154. PAYMENT TO COMPTROLLER. A taxable entity  
3 [~~corporation~~] on which a tax is imposed by this chapter shall pay  
4 the tax to the comptroller.

5           Sec. 171.158. PAYMENT BY FOREIGN TAXABLE ENTITY  
6 [~~CORPORATION~~] BEFORE WITHDRAWAL FROM STATE. (a) Except as  
7 provided by Subsection (b) [~~of this section~~], a foreign taxable  
8 entity [~~corporation~~] holding a registration or certificate of  
9 authority to do business in this state may withdraw from doing  
10 business in this state by filing a certificate of withdrawal with  
11 the secretary of state. The secretary of state shall file the  
12 certificate of withdrawal as provided by law.

13           (b) The foreign taxable entity [~~corporation~~] may not  
14 withdraw from doing business in this state unless it has paid,  
15 before filing the certificate of withdrawal, any tax or penalty  
16 imposed by this chapter on the taxable entity [~~corporation~~].

17           SECTION 5. Subchapter E, Chapter 171, Tax Code, is amended  
18 to read as follows:

19                           SUBCHAPTER E. REPORTS AND RECORDS

20           Sec. 171.201. INITIAL REPORT. (a) Except as provided by  
21 Section 171.2022, a taxable entity [~~corporation~~] on which the  
22 franchise tax is imposed shall file an initial report with the  
23 comptroller containing:

24           (1) information showing the financial condition of the  
25 taxable entity [~~corporation~~] on the day that is the last day of a  
26 calendar month and that is nearest to the end of the taxable  
27 entity's [~~corporation's~~] first year of business;

1 (2) the name and address of:

2 (A) each officer, [and] director, and manager of  
3 the taxable entity [~~corporation~~];

4 (B) for a limited partnership, each general  
5 partner;

6 (C) for a general partnership or limited  
7 liability partnership, each managing partner or, if there is not a  
8 managing partner, each partner; or

9 (D) for a trust, each trustee;

10 (3) the name and address of the agent of the taxable  
11 entity [~~corporation~~] designated under Section 171.354; and

12 (4) other information required by the comptroller.

13 (b) The taxable entity [~~corporation~~] shall file the report  
14 on or before the date the payment is due under [~~Subsection (a) of~~]  
15 Section 171.152(a) [~~171.152~~].

16 Sec. 171.202. ANNUAL REPORT. (a) Except as provided by  
17 Section 171.2022, a taxable entity [~~corporation~~] on which the  
18 franchise tax is imposed shall file an annual report with the  
19 comptroller containing:

20 (1) financial information of the taxable entity  
21 [~~corporation~~] necessary to compute the tax under this chapter;

22 (2) the name and address of each officer and director  
23 of the taxable entity [~~corporation~~];

24 (3) the name and address of the agent of the taxable  
25 entity [~~corporation~~] designated under Section 171.354; and

26 (4) other information required by the comptroller.

27 (b) The taxable entity [~~corporation~~] shall file the report

1 before May 16 of each year after the beginning of the regular annual  
2 period. The report shall be filed on forms supplied by the  
3 comptroller.

4 (c) The comptroller shall grant an extension of time to a  
5 taxable entity [~~corporation~~] that is not required by rule to make  
6 its tax payments by electronic funds transfer for the filing of a  
7 report required by this section to any date on or before the next  
8 November 15, if a taxable entity [~~corporation~~]:

9 (1) requests the extension, on or before May 15, on a  
10 form provided by the comptroller; and

11 (2) remits with the request:

12 (A) not less than 90 percent of the amount of tax  
13 reported as due on the report filed on or before November 15; or

14 (B) 100 percent of the tax reported as due for the  
15 previous calendar year on the report due in the previous calendar  
16 year and filed on or before May 14.

17 (d) In the case of a taxpayer whose previous return was its  
18 initial report, the optional payment provided under Subsection  
19 (c)(2)(B) or (e)(2)(B) must be equal to [~~the greater of:~~

20 [~~(1)~~] an amount produced by multiplying the [~~net~~]  
21 taxable margin [~~capital~~], as reported on the initial report filed  
22 on or before May 14, by the rate of tax in Section 171.002  
23 [~~171.002(a)(1)~~] that is effective January 1 of the year in which the  
24 report is due[, ~~or~~

25 [~~(2)~~] ~~an amount produced by multiplying the net taxable~~  
26 ~~earned surplus, as reported on the initial report filed on or before~~  
27 ~~May 14, by the rate of tax in Section 171.002(a)(2) that is~~

1 ~~effective January 1 of the year in which the report is due~~].

2 (e) The comptroller shall grant an extension of time for the  
3 filing of a report required by this section by a taxable entity  
4 [~~corporation~~] required by rule to make its tax payments by  
5 electronic funds transfer to any date on or before the next August  
6 15, if the taxable entity [~~corporation~~]:

7 (1) requests the extension, on or before May 15, on a  
8 form provided by the comptroller; and

9 (2) remits with the request:

10 (A) not less than 90 percent of the amount of tax  
11 reported as due on the report filed on or before August 15; or

12 (B) 100 percent of the tax reported as due for the  
13 previous calendar year on the report due in the previous calendar  
14 year and filed on or before May 14.

15 (f) The comptroller shall grant an extension of time to a  
16 taxable entity [~~corporation~~] required by rule to make its tax  
17 payments by electronic funds transfer for the filing of a report due  
18 on or before August 15 to any date on or before the next November 15,  
19 if the taxable entity [~~corporation~~]:

20 (1) requests the extension, on or before August 15, on  
21 a form provided by the comptroller; and

22 (2) remits with the request the difference between the  
23 amount remitted under Subsection (e) and 100 percent of the amount  
24 of tax reported as due on the report filed on or before November 15.

25 (h) If the sum of the amounts paid under Subsections (e)(2)  
26 and (f)(2) is at least 99 percent of the amount reported as due on  
27 the report filed on or before November 15, penalties for

1 underpayment with respect to the amount paid under Subsection  
2 (f)(2) are waived.

3 (i) If a taxable entity [~~corporation~~] requesting an  
4 extension under Subsection (c) or (e) does not file the report due  
5 in the previous calendar year on or before May 14, the taxable  
6 entity [~~corporation~~] may not receive an extension under Subsection  
7 (c) or (e) unless the taxable entity [~~corporation~~] complies with  
8 Subsection (c)(2)(A) or (e)(2)(A), as appropriate.

9 Sec. 171.2022. EXEMPTION FROM REPORTING REQUIREMENTS. A  
10 taxable entity [~~corporation~~] that does not owe any tax under this  
11 chapter for any period is not required to file a report under  
12 Section 171.201 or [~~7~~] 171.202 [~~7~~, ~~or~~ ~~171.2021~~]. The exemption  
13 applies only to a period for which no tax is due.

14 Sec. 171.203. PUBLIC INFORMATION REPORT. (a) A  
15 corporation on which the franchise tax is imposed, regardless of  
16 whether the corporation is required to pay any tax, shall file a  
17 report with the comptroller containing:

18 (1) the name of each corporation in which the  
19 corporation filing the report owns a 10 percent or greater interest  
20 and the percentage owned by the corporation;

21 (2) the name of each corporation that owns a 10 percent  
22 or greater interest in the corporation filing the report;

23 (3) the name, title, and mailing address of each  
24 person who is an officer or director of the corporation on the date  
25 the report is filed and the expiration date of each person's term as  
26 an officer or director, if any;

27 (4) the name and address of the agent of the

1 corporation designated under Section 171.354 [~~of this code~~]; and

2 (5) the address of the corporation's principal office  
3 and principal place of business.

4 (b) The corporation shall file the report once a year on a  
5 form prescribed by the comptroller.

6 (c) The comptroller shall forward the report to the  
7 secretary of state.

8 (d) The corporation shall send a copy of the report to each  
9 person named in the report under Subsection (a)(3) who is not  
10 currently employed by the corporation or a related corporation  
11 listed in Subsection (a)(1) or (2). An officer or director of the  
12 corporation or another authorized person must sign the report under  
13 a certification that:

14 (1) all information contained in the report is true  
15 and correct to the best of the person's knowledge; and

16 (2) a copy of the report has been mailed to each person  
17 identified in this subsection on the date the return is filed.

18 (e) If a person's name is included in a report under  
19 Subsection (a)(3) and the person is not an officer or director of  
20 the corporation on the date the report is filed, the person may file  
21 with the comptroller a sworn statement disclaiming the person's  
22 status as shown on the report. The comptroller shall maintain a  
23 record of statements filed under this subsection and shall make  
24 that information available on request using the same procedures the  
25 comptroller uses for other requests for public information.

26 (f) A public information report that is filed  
27 electronically complies with the signature and certification

1 requirements prescribed by Subsection (d).

2           Sec. 171.204. INFORMATION REPORT. (a) Except as provided  
3 by Subsection (b), to determine eligibility for the exemption  
4 provided by Section 171.2022, or to determine the amount of the  
5 franchise tax or the correctness of a franchise tax report, the  
6 comptroller may require ~~[an officer of]~~ a taxable entity  
7 ~~[corporation]~~ that may be subject to the tax imposed under this  
8 chapter to file an information report with the comptroller stating  
9 the amount of the taxable entity's margin ~~[corporation's taxable~~  
10 ~~capital and earned surplus]~~, or any other information the  
11 comptroller may request.

12           (b) The comptroller may require a taxable entity ~~[an officer~~  
13 ~~of a corporation]~~ that does not owe any tax because of the  
14 application of Section 171.002(d)(2) to file an abbreviated  
15 information report with the comptroller stating the amount of the  
16 taxable entity's total revenue ~~[corporation's gross receipts]~~ from  
17 its entire business. The comptroller may not require a taxable  
18 entity ~~[corporation]~~ described by this subsection to file an  
19 information report that requires the taxable entity ~~[corporation]~~  
20 to report or compute its margin ~~[earned surplus or taxable~~  
21 ~~capital]~~.

22           Sec. 171.205. ADDITIONAL INFORMATION REQUIRED BY  
23 COMPTROLLER. The comptroller may require a taxable entity  
24 ~~[corporation]~~ on which the franchise tax is imposed to furnish to  
25 the comptroller information from the taxable entity's  
26 ~~[corporation's]~~ books and records that has not been filed  
27 previously and that is necessary for the comptroller to determine

1 the amount of the tax.

2 Sec. 171.206. CONFIDENTIAL INFORMATION. Except as provided  
3 by Section 171.207 [~~of this code~~], the following information is  
4 confidential and may not be made open to public inspection:

5 (1) information that is obtained from a record or  
6 other instrument that is required by this chapter to be filed with  
7 the comptroller; or

8 (2) information, including information about the  
9 business affairs, operations, profits, losses, or expenditures of a  
10 taxable entity [~~corporation~~], obtained by an examination of the  
11 books and records, officers, partners, trustees, agents, or  
12 employees of a taxable entity [~~corporation~~] on which a tax is  
13 imposed by this chapter.

14 Sec. 171.207. INFORMATION NOT CONFIDENTIAL. The following  
15 information is not confidential and shall be made open to public  
16 inspection:

17 (1) information contained in a document filed under  
18 this chapter with a county clerk as notice of a tax lien; and

19 (2) information contained in a report required by  
20 Section 171.203 [~~of this code~~].

21 Sec. 171.208. PROHIBITION OF DISCLOSURE OF INFORMATION. A  
22 person, including a state officer or employee or an owner [~~a~~  
23 ~~shareholder~~] of a taxable entity [~~corporation~~], who has access to a  
24 report filed under this chapter may not make known in a manner not  
25 permitted by law the amount or source of the taxable entity's  
26 [~~corporation's~~] income, profits, losses, expenditures, or other  
27 information in the report relating to the financial condition of

1 the taxable entity [~~corporation~~].

2           Sec. 171.209. RIGHT OF OWNER [~~SHAREHOLDER~~] TO EXAMINE OR  
3 RECEIVE REPORTS. If an owner [~~a person owning at least one share of~~  
4 ~~outstanding stock~~] of a taxable entity [~~corporation~~] on whom the  
5 franchise tax is imposed presents evidence of the ownership to the  
6 comptroller, the person is entitled to examine or receive a copy of  
7 an initial or annual report that is filed under Section 171.201 or  
8 171.202 [~~of this code~~] and that relates to the taxable entity  
9 [~~corporation~~].

10           Sec. 171.210. PERMITTED USE OF CONFIDENTIAL INFORMATION.

11 (a) To enforce this chapter, the comptroller or attorney general  
12 may use information made confidential by this chapter.

13 (b) The comptroller or attorney general may authorize the  
14 use of the confidential information in a judicial proceeding in  
15 which the state is a party. The comptroller or attorney general may  
16 authorize examination of the confidential information by:

- 17           (1) another state officer of this state;
- 18           (2) a law enforcement official of this state; or
- 19           (3) a tax official of another state or an official of  
20 the federal government if the other state or the federal government  
21 has a reciprocal arrangement with this state.

22           Sec. 171.211. EXAMINATION OF [~~CORPORATE~~] RECORDS. To  
23 determine the franchise tax liability of a taxable entity  
24 [~~corporation~~], the comptroller may investigate or examine the  
25 records of the taxable entity [~~corporation~~].

26           Sec. 171.212. REPORT OF CHANGES TO FEDERAL INCOME TAX  
27 RETURN. (a) A taxable entity [~~corporation~~] must file an amended

1 report under this chapter if:

2 (1) the taxable entity's [~~corporation's net~~] taxable  
3 margin [~~earned surplus~~] is changed as the result of an audit or  
4 other adjustment by the Internal Revenue Service or another  
5 competent authority; or

6 (2) the taxable entity [~~corporation~~] files an amended  
7 federal income tax return or other return that changes the taxable  
8 entity's [~~corporation's net~~] taxable margin [~~earned surplus~~].

9 (b) The taxable entity [~~corporation~~] shall file the amended  
10 report under Subsection (a)(1) not later than the 120th day after  
11 the date the revenue agent's report or other adjustment is final.  
12 For purposes of this subsection, a revenue agent's report or other  
13 adjustment is final on the date on which all administrative appeals  
14 with the Internal Revenue Service or other competent authority have  
15 been exhausted or waived.

16 (c) The taxable entity [~~corporation~~] shall file the amended  
17 report under Subsection (a)(2) not later than the 120th day after  
18 the date the taxable entity [~~corporation~~] files the amended federal  
19 income tax return or other return. For purposes of this subsection,  
20 a taxable entity [~~corporation~~] is considered to have filed an  
21 amended federal income tax return if the taxable entity  
22 [~~corporation~~] is a member of an affiliated group during a period in  
23 which an amended consolidated federal income tax report is filed.

24 (d) If a taxable entity [~~corporation~~] fails to comply with  
25 this section, the taxable entity [~~corporation~~] is liable for a  
26 penalty of 10 percent of the tax that should have been reported  
27 under this section and that had not previously been reported to the

1 comptroller. The penalty prescribed by this subsection is in  
2 addition to any other penalty provided by law.

3 SECTION 6. The heading to Subchapter F, Chapter 171, Tax  
4 Code, is amended to read as follows:

5 SUBCHAPTER F. FORFEITURE OF CORPORATE AND BUSINESS PRIVILEGES

6 SECTION 7. Subchapter F, Chapter 171, Tax Code, is amended  
7 by adding Section 171.2515 to read as follows:

8 Sec. 171.2515. FORFEITURE OF RIGHT OF TAXABLE ENTITY TO  
9 TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the  
10 same reasons and using the same procedures the comptroller uses in  
11 relation to the forfeiture of the corporate privileges of a  
12 corporation, forfeit the right of a taxable entity to transact  
13 business in this state.

14 (b) The provisions of this subchapter, including Section  
15 171.255, that apply to the forfeiture of corporate privileges apply  
16 to the forfeiture of a taxable entity's right to transact business  
17 in this state.

18 SECTION 8. Section 171.351, Tax Code, is amended to read as  
19 follows:

20 Sec. 171.351. VENUE OF SUIT TO ENFORCE CHAPTER. Venue of a  
21 civil suit against a taxable entity [~~corporation~~] to enforce this  
22 chapter is either in a county where the taxable entity's  
23 [~~corporation's~~] principal office is located according to its  
24 charter or certificate of authority or in Travis County.

25 SECTION 9. Section 171.353, Tax Code, is amended to read as  
26 follows:

27 Sec. 171.353. APPOINTMENT OF RECEIVER. If a court forfeits

1 a taxable entity's [~~corporation's~~] charter or certificate of  
2 authority, the court may appoint a receiver for the taxable entity  
3 [~~corporation~~] and may administer the receivership under the laws  
4 relating to receiverships.

5 SECTION 10. Section 171.354, Tax Code, is amended to read as  
6 follows:

7 Sec. 171.354. AGENT FOR SERVICE OF PROCESS. Each taxable  
8 entity [~~corporation~~] on which a tax is imposed by this chapter shall  
9 designate a resident of this state as the taxable entity's  
10 [~~corporation's~~] agent for the service of process.

11 SECTION 11. Sections 171.362(a), (d), and (e), Tax Code,  
12 are amended to read as follows:

13 (a) If a taxable entity [~~corporation~~] on which a tax is  
14 imposed by this chapter fails to pay the tax when it is due and  
15 payable or fails to file a report required by this chapter when it  
16 is due, the taxable entity [~~corporation~~] is liable for a penalty of  
17 five percent of the amount of the tax due.

18 (d) If a taxable entity [~~corporation~~] electing to remit  
19 under [~~Paragraph (A) of Subdivision (2) of Subsection (c) of~~]  
20 Section 171.202(c)(2)(A) [~~171.202 of this code~~] remits less than  
21 the amount required, the penalties imposed by this section and the  
22 interest imposed under Section 111.060 [~~of this code~~] are assessed  
23 against the difference between the amount required to be remitted  
24 under [~~Paragraph (A) of Subdivision (2) of Subsection (c) of~~]  
25 Section 171.202(c)(2)(A) [~~171.202~~] and the amount actually  
26 remitted on or before May 15.

27 (e) If a taxable entity [~~corporation~~] remits the entire

1 amount required by [~~Subsection (c) of~~] Section 171.202(c) [~~171.202~~  
2 ~~of this code~~], no penalties will be imposed against the amount  
3 remitted on or before November 15.

4 SECTION 12. Sections 171.363(a) and (b), Tax Code, are  
5 amended to read as follows:

6 (a) A taxable entity [~~corporation~~] commits an offense if the  
7 taxable entity [~~corporation~~] is subject to the provisions of this  
8 chapter and the taxable entity [~~corporation~~] wilfully:

9 (1) fails to file a report;

10 (2) fails to keep books and records as required by this  
11 chapter;

12 (3) files a fraudulent report;

13 (4) violates any rule of the comptroller for the  
14 administration and enforcement of the provisions of this chapter;  
15 or

16 (5) attempts in any other manner to evade or defeat any  
17 tax imposed by this chapter or the payment of the tax.

18 (b) A person commits an offense if the person is an  
19 accountant or an agent for or an officer or employee of a taxable  
20 entity [~~corporation~~] and the person knowingly enters or provides  
21 false information on any report, return, or other document filed by  
22 the taxable entity [~~corporation~~] under this chapter.

23 SECTION 13. Section 171.401, Tax Code, is amended to read as  
24 follows:

25 Sec. 171.401. REVENUE DEPOSITED IN GENERAL REVENUE FUND.

26 The revenue from the tax imposed by this chapter [~~on corporations~~]  
27 shall be deposited to the credit of the general revenue fund.

1           SECTION 14. (a) The repeal of Section 171.111, Tax Code,  
2 by this Act does not affect a credit that accrued under that section  
3 before the effective date of this Act.

4           (b) A corporation that has any unused credits accrued before  
5 the effective date of this Act under Section 171.111, Tax Code, may  
6 claim those unused credits on or with the tax report for the period  
7 in which the credits were accrued, and the former law under which  
8 the corporation accrued the credits is continued in effect for  
9 purposes of determining the amount of the credits the corporation  
10 may claim and the manner in which the corporation may claim the  
11 credits.

12           SECTION 15. (a) The following provisions of Chapter 171,  
13 Tax Code, are repealed:

- 14           (1) Subchapter L;
- 15           (2) Subchapter M;
- 16           (3) Subchapter N;
- 17           (4) Subchapter O;
- 18           (5) Subchapter P;
- 19           (6) Subchapter Q;
- 20           (7) Subchapter R;
- 21           (8) Subchapter S;
- 22           (9) Subchapter T;
- 23           (10) Subchapter U as added by Chapter 209, Acts of the  
24 78th Legislature, Regular Session, 2003; and
- 25           (11) Subchapter U as added by Chapter 1274, Acts of the  
26 78th Legislature, Regular Session, 2003.

27           (b) This section does not affect a credit authorized by a

1 provision listed in Subsection (a) of this section that accrued  
2 under Chapter 171, Tax Code, before the effective date of this Act  
3 or a credit that continues to accrue under Section 16 of this Act.

4 (c) A corporation that has any unused credits accrued before  
5 the effective date of this Act under a provision other than  
6 Subchapter O, P, or Q, Chapter 171, Tax Code, may claim those unused  
7 credits on or with the tax report for the period in which the  
8 credits were accrued, and the former law under which the  
9 corporation accrued the credits is continued in effect for purposes  
10 of determining the amount of the credits the corporation may claim  
11 and the manner in which the corporation may claim the credits.

12 (d) A corporation that has any unused credits accrued before  
13 the effective date of this Act under Subchapter O, Chapter 171, Tax  
14 Code, may claim those unused credits on or with the tax report for  
15 the period in which the credit was accrued. However, if the  
16 corporation was allowed to carry forward unused credits under that  
17 subchapter, the corporation may continue to apply those credits on  
18 or with each consecutive report until the earlier of the date the  
19 credit would have expired under the terms of Subchapter O, Chapter  
20 171, Tax Code, had it continued in existence, or December 31, 2027,  
21 and the former law under which the corporation accrued the credits  
22 is continued in effect for purposes of determining the amount of the  
23 credits the corporation may claim and the manner in which the  
24 corporation may claim the credits.

25 (e) A corporation that has any unused credits accrued before  
26 the effective date of this Act under Subchapter P, Chapter 171, Tax  
27 Code, may claim those unused credits on or with the tax report for

1 the period in which the credit was accrued. However, if the  
2 corporation was allowed to carry forward unused credits under that  
3 subchapter, the corporation may continue to apply those credits on  
4 or with each consecutive report until the earlier of the date the  
5 credit would have expired under the terms of Subchapter P, Chapter  
6 171, Tax Code, had it continued in existence, or December 31, 2012,  
7 and the former law under which the corporation accrued the credits  
8 is continued in effect for purposes of determining the amount of the  
9 credits the corporation may claim and the manner in which the  
10 corporation may claim the credits.

11 (f) A corporation that has any unused credits accrued before  
12 the effective date of this Act under Subchapter Q, Chapter 171, Tax  
13 Code, may claim those unused credits on or with the tax report for  
14 the period in which the credit was accrued. However, if the  
15 corporation was allowed to carry forward unused credits under that  
16 subchapter, the corporation may continue to apply those credits on  
17 or with each consecutive report until the earlier of the date the  
18 credit would have expired under the terms of Subchapter Q, Chapter  
19 171, Tax Code, had it continued in existence, or December 31, 2012,  
20 and the former law under which the corporation accrued the credits  
21 is continued in effect for purposes of determining the amount of the  
22 credits the corporation may claim and the manner in which the  
23 corporation may claim the credits.

24 (g) The comptroller shall adopt rules to administer this  
25 section.

26 SECTION 16. A written agreement between the Texas  
27 Department of Economic Development or its successor and a taxpayer

1 effective before June 1, 2006, that allows for credits against the  
2 tax imposed under Chapter 171, Tax Code, continues in effect and the  
3 credits allowed under the agreement continue to accrue and may be  
4 claimed in the manner provided by the agreement against the tax  
5 imposed under Chapter 171, Tax Code, as amended by this Act, for the  
6 duration of the agreement. The former law under which the agreement  
7 was made and under which the taxpayer received the entitlement to  
8 the credits is continued in effect for purposes of determining the  
9 amount of the credits the taxpayer may claim and the manner in which  
10 the taxpayer may claim the credits.

11 SECTION 17. The franchise tax imposed by Chapter 171, Tax  
12 Code, as amended by this Act, is not an income tax and Pub. L. No.  
13 86-272 does not apply to the tax.

14 SECTION 18. (a) Subject to other provisions of this  
15 section, this Act applies to reports originally due on or after the  
16 effective date of this Act.

17 (b) For an entity becoming subject to the franchise tax  
18 under this Act:

19 (1) margin or gross receipts occurring before June 1,  
20 2006, may not be considered for purposes of determining taxable  
21 margin or for apportionment purposes;

22 (2) an entity subject to the franchise tax on January  
23 1, 2008, that was not previously subject to the tax and for which  
24 January 1, 2008, is not the beginning date, shall file an annual  
25 report due May 15, 2008, based on the period:

26 (A) if the entity has an accounting period that  
27 ends on or after January 1, 2007, and before June 1, 2007:

1 (i) beginning on the later of:  
2 (a) June 1, 2006; or  
3 (b) the date the entity was organized  
4 in this state or, if a foreign entity, the date it began doing  
5 business in this state; and

6 (ii) ending on the date that accounting  
7 period ends in 2007;

8 (B) if the entity has an accounting period that  
9 ends on or after June 1, 2007, and before December 31, 2007:

10 (i) beginning on the date that accounting  
11 period begins; and

12 (ii) ending on the date that accounting  
13 period ends in 2007; and

14 (C) if the entity has an accounting period that  
15 ends on December 31, 2007, or if the entity does not have an  
16 accounting period that ends in 2007:

17 (i) beginning on the later of:

18 (a) January 1, 2007; or

19 (b) the date the entity was organized  
20 in the state or, if a foreign entity, the date it began doing  
21 business in this state; and

22 (ii) ending on December 31, 2007; and

23 (3) an entity subject to the franchise tax as it  
24 existed before the effective date of this Act at any time after  
25 December 31, 2006, and before January 1, 2008, but not subject to  
26 the franchise tax on January 1, 2008, shall file a final report for  
27 the privilege of doing business at any time after June 30, 2007, and

1 before January 1, 2008, based on the period:

2 (A) beginning on the later of:

3 (i) January 1, 2007; or

4 (ii) the date the entity was organized in  
5 this state or, if a foreign entity, the date it began doing business  
6 in this state; and

7 (B) ending on the date the entity became no  
8 longer subject to the franchise tax.

9 (c) For purposes of this Act, an existing partnership is  
10 considered as continuing if it is not terminated.

11 (d) A partnership is considered terminated only if no part  
12 of any business, financial operation, or venture of the partnership  
13 continues to be carried on by any of its partners in a partnership.

14 (e) For a merger or consolidation of two or more  
15 partnerships, the resulting partnership is, for purposes of this  
16 Act, considered the continuation of any merging or consolidating  
17 partnership whose members own an interest of more than 50 percent in  
18 the capital and profits of the resulting partnership.

19 (f) For a division of a partnership into two or more  
20 partnerships, the resulting partnerships, other than any resulting  
21 partnership the members of which had an interest of 50 percent or  
22 less in the capital and profits of the prior partnership, are, for  
23 purposes of this Act, considered a continuation of the prior  
24 partnership.

25 SECTION 19. (a) The comptroller shall require the entities  
26 specified by this section to file an information report in the  
27 manner provided by this section. The information report is

1 confidential and exempt from disclosure under Chapter 552,  
2 Government Code.

3 (b) The information report required under this section must  
4 contain the same information that an entity required to file the  
5 report would have submitted in its report due to the comptroller in  
6 2006 under Chapter 171, Tax Code, if the changes made by this Act to  
7 Chapter 171, Tax Code, had been in effect January 1, 2006. The  
8 comptroller shall provide the forms and instructions to the  
9 entities required to file a report under this section.

10 (c) The comptroller shall take action to revoke the charter,  
11 as that term is defined by Section 171.0001, Tax Code, as added by  
12 this Act, of an entity that does not file an information return in  
13 the manner and under the time limits provided by this section.

14 (d) The comptroller shall identify and require the  
15 following entities to file an information report under this  
16 section:

17 (1) the 1,000 entities that paid or are required to pay  
18 the most franchise tax for the annual reporting period ending  
19 December 31, 2005, under Chapter 171, Tax Code, as that chapter  
20 existed on the effective date of this section;

21 (2) the 1,000 entities doing business in this state  
22 that had the greatest amount of gross receipts in 2005, as  
23 determined under Sections 171.105 and 171.1051, Tax Code, as those  
24 sections existed on the effective date of this section; and

25 (3) the 1,000 entities doing business in this state  
26 with the greatest number of employees in this state, according to  
27 records maintained by the Texas Workforce Commission, in 2005.

1           (e) An entity may be listed in one or more of the categories  
2 under Subsection (d) of this section. An entity that is listed more  
3 than once is required by this section to file only one information  
4 return.

5           (f) The comptroller:

6                 (1) shall identify the entities described by  
7 Subsection (d) of this section;

8                 (2) shall prepare all forms and instructions required  
9 for those entities to file their information reports as required by  
10 this section;

11                (3) shall provide those forms and instructions to  
12 those entities on or after November 15, 2006, but before December 2,  
13 2006;

14                (4) shall require the entities to submit their  
15 information reports on or before February 15, 2007;

16                (5) may not grant any extensions for filing the  
17 information reports; and

18                (6) shall report to the governor, the lieutenant  
19 governor, and the members of the legislature, on or before April 1,  
20 2007, the results of the information reports, stating the amount of  
21 revenue the tax under Chapter 171, Tax Code, would have generated  
22 from the entities submitting information reports under this section  
23 if the changes made by this Act to Chapter 171, Tax Code, had been in  
24 effect January 1, 2006.

25           (g) The report required under Subsection (f)(6) of this  
26 section may not be formatted in a manner or include any information  
27 that discloses or effectively discloses the specific identity of a

1 reporting entity.

2 (h) This section takes effect as provided by Section 23 of  
3 this Act.

4 SECTION 20. (a) This section applies to a suit brought by  
5 an entity subject to the tax under Chapter 171, Tax Code, as amended  
6 by this Act, contending that the imposition of the tax on the entity  
7 is unconstitutional.

8 (b) The suit must be brought in a district court in Travis  
9 County.

10 (c) The judgment of the district court may be reviewed only  
11 by direct appeal to the supreme court filed on or before the 15th  
12 day after the date the district court enters its judgment. The  
13 district court shall try the suit and the supreme court shall hear  
14 any appeal relating to the suit as expeditiously as possible.

15 (d) This section takes effect as provided by Section 23 of  
16 this Act.

17 SECTION 21. (a) The amount of \$2 million is appropriated  
18 out of the general revenue fund to the comptroller of public  
19 accounts for the state fiscal biennium ending August 31, 2007, for  
20 the implementation of this Act and for audit and enforcement  
21 activities.

22 (b) This section takes effect as provided by Section 23 of  
23 this Act.

24 SECTION 22. Except as otherwise provided by Section 23 of  
25 this Act, this Act takes effect January 1, 2008, and applies to  
26 reports originally due on or after that date.

27 SECTION 23. A section of this Act that provides that it

C.S.H.B. No. 3

1 takes effect as provided by this section takes effect June 1, 2006,  
2 if this Act receives a vote of two-thirds of all the members elected  
3 to each house, as provided by Section 39, Article III, Texas  
4 Constitution. If this Act does not receive the vote necessary for  
5 effect on that date, that section takes effect September 1, 2006.